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ALPHEUS THOMAS MASON

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ALAN JONES

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Understanding the Warren Court: Judicial Self-Restraint and Judicial Duty

ALPHEUS THOMAS MASON
Princeton University

The heart of any constitution consists of its bill of rights, those provisions that secure to the people their liberty of conscience, of speech, of the press, of lawful assembly, and the right to uniform application of the laws and to due process.

Governor Earl Warren, Address to the Legislative Joint Interim Committee on Constitutional Revision and its Advisory Committee. Santa Barbara, California, Oct. 29, 1947.

The Warren Court (some call it the "Warren Revolution"), now entering its fourteenth year, continues unabated its myth-shattering, precedent-breaking course. Hamilton's relaxed portrayal of the judiciary as a weakling, along with Chief Justice Marshall's incredible description of the judicial function as involving only judgment, not will,[1] are revealed once again as gross mis-

[1] Chief Justice Marshall in *Osborn* v. *U.S. Bank*, 9 Wheat. 738, 866 (1824). Symbolism and magic are, of course, useful in the governing process. But judges tend to insist on their impotence when they are making almost brazen use of their power. "Professions of automatism are most insistent," Professor Thomas Reed Powell observed, "when it is most obvious that they are being honored in the breach rather than in the observance." T. R. Powell, *Vagaries and Varieties in Constitutional Interpretation* (New York, 1956), 43. See my "Myth and Reali-

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representations. Jefferson and Madison anticipated with warm approval that the judiciary would participate creatively in the enforcement of the Bill of Rights. A Court of able and independent judges, empowered to enforce the Bill of Rights, Jefferson assured Madison, would not yield to a frenzied multitude demanding perverse things—"civium ardor prava jubentium."[2]

In America, all social and political issues sooner or later become judicial. Only the context in which judges operate changes. Courts do not and should not function in a vacuum. But the motives prompting judicial intervention are not inspired by equally valid or praiseworthy considerations. Warring against each other are differing concepts of judicial duty and judicial self-restraint. The point is dramatically illustrated by two historic examples—*Scott* v. *Sandford*[3] and *Brown* v. *Board of Education*.[4]

Separated by almost a century, judicial action in both these cases was obviously in response to time and circumstance. In words as applicable in 1954 as they were in 1857, Justice Wayne, concurring in *Dred Scott*, remarked:

> [T]here had become such a difference of opinion that the peace and harmony of the country required the settlement of them [the slavery issues] by judicial decision. . . . In our action we have only discharged our duty as a distinct and efficient department of the Government, as the framers of the Constitution meant the judiciary to be . . . .[5]

In 1857 extension of slavery had become a major issue; in 1954 racial discrimination was not only creating domestic unrest, but also projecting a highly unfavorable image of America to the entire world. In both instances, the Court attempted to settle a volcanic issue; in both, the opinions were less firmly grounded than seemed desirable in decisions so momentous. The justices split nine ways in *Dred Scott*; in *Brown* they were unanimous, allowing Chief Justice

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ty in Supreme Court Decisions," *Virginia Law Review*, XLVIII (1962), 1385-1406.

[2] Thomas Jefferson to James Madison, March 15, 1789, in Julian P. Boyd (ed.), *The Jefferson Papers* (Princeton, 1950-), XIV, 661.

[3] 60 U.S. (19 Howard) 393 (1857).

[4] 347 U.S. 483 (1954).

[5] *Scott* v. *Sandford*, 454-55 (concurring opinion).

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Warren to throw the full weight of his office and the prestige of the Court behind a ruling certain to provoke bitter controversy. Chief Justice Taney and his quarrelsome majority denied Congress power it wanted to exert, an authority many felt it could properly exercise. The Warren Court asserted a power which Congress, under existing Senate rules, could not exercise even if there had been the will to do so.[6] Taney raised an absolute bar against congressional action, ignoring precedents created by his own Court.[7] Though a line of decisions pointed in this direction, reaching a high point, ironically, during the quiescent years of Chief Justice Fred M. Vinson,[8] the Warren Court was careful not to overrule *Plessy* v. *Ferguson*[9] beyond the point necessary to abolish the "separate but equal" doctrine in the area of public education. Taney's unequivocal assertion that the Negro had no rights a white man was bound to respect crystallized the slavery issue, helping to bring on the Civil War, the Emancipation Proclamation, and the revolutionary Thirteenth, Fourteenth, and Fifteenth Amendments. *Brown* sparked the Negro revolution, stimulating Congress to pass the first civil rights legislation in almost a century—the civil rights acts of 1957, 1960, 1964, 1965, with other measures still pending. *Dred Scott* dealt a blow to the Court's prestige from which it did not recover for more than a generation; it was one of three notable instances Charles Evans Hughes singled out in which the Court "suffered severely from self-inflicted wounds."[10] Subjected to both praise and blame, *Brown* changed the image of America at home and abroad.

Certain commonplace lessons may be drawn from these explosive forays into judicial politics. Supreme Court justices may accelerate tendencies, but cannot reverse them. Chief Justice Taney declared that "any change in public opinion or feeling, in relation to this unfortunate race" must under no circumstances be allowed to weigh in the balance. The Constitution "must be construed now as it was

[6] R. J. Harris, "The Constitution, Education, and Segregation," *Temple Law Quarterly*, XXIX (1956), 409-33.

[7] See E. S. Corwin, *The Doctrine of Judicial Review* (Princeton, 1914), 134.

[8] See *Missouri* ex rel. *Gaines* v. *Canada*, 305 U.S. 337 (1938); *Sipuel* v. *Board of Regents*, 332 U.S. 631 (1948); *Sweatt* v. *Painter*, 339 U.S. 629 (1950); *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950).

[9] 163 U.S. 537 (1896).

[10] Charles Evans Hughes, *The Supreme Court of the United States* (New York, 1928), 50.

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understood at the time of its adoption."[11] Chief Justice Warren was more realistic, as well as more creative. For him, as for Woodrow Wilson, the Constitution is "the vehicle of a nation's life."[12] In approaching racial segregation, the justices refused to "turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written."[13] In both cases, the Court undertook to resolve a seething issue beyond the capacity of any or all other agencies of government. One was an abortive endorsement of slavery; the other, in accord with American ideals—a testimonial to what Tocqueville called the "providential" drive for equality.

Implicit in *Dred Scott* is a theory of the union—"dual federalism" —the notion that the Constitution reserves certain subject matter, in this instance slavery, to the states, thus putting it beyond the reach of national control. *Brown*, exhibiting sensitivity to human values, asserted judicial supervision of them. In both instances the Court was criticized for making policy, for usurping the lawmaking function. Taney substituted his own conception of public policy for that declared by Congress. In 1954, Congress had not spoken on the subject of school desegregation. For practical reasons, implementation of the equal protection clause of the Fourteenth Amendment had been left to the courts.[14] Positive judicial responsibility had developed in this area. In 1857, Congress had acted; there was no need or justification for judicial policy-making. In 1954 there was every reason for it. The Court had written racial segregation into the Constitution. Under vastly changed conditions, the justices used their prerogative to read it out of our basic law.

Sometimes sharp divergence of judicial approach occurs in the same case, one stressing the negative, as in *Dred Scott*, the other the positive aspects exhibited in *Brown*. A good example of this historic dichotomy is *Baker* v. *Carr*,[15] the first in a series of judicial decisions[16] making rotten boroughs subject to judicial correction.

[11] *Scott* v. *Sandford*, 393, 426.

[12] Woodrow Wilson, *Constitutional Government in the United States* (New York, 1917), 157.

[13] *Brown* v. *Board of Education*, 492.

[14] See Paul Freund, "Storm over the Supreme Court," *Modern Law Review*, XXI (1958), 351.

[15] 369 U.S. 186 (1962).

[16] *Wesberry* v. *Sanders*, 376 U.S. 1 (1964); *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

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"Courts ought not to enter this political thicket," Justice Frankfurter had warned in 1946. "It is hostile to a democratic system to involve the Judiciary in the politics of the people. . . . The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or invoke the ample powers of Congress."[17]

The Court's decision in *Baker*, March 26, 1962, holding that voters whose franchise is diluted by unfair, unequal, or discriminatory apportionment of legislative seats, may seek relief in the federal courts, stimulated an illuminating exchange between Justices Frankfurter and Clark. Pleading for judicial self-restraint, Frankfurter deplored as "a massive repudiation of the experience of our whole past," the Court's belated assumption of responsibility for a more equitable system of representation. Judicial invasion of this "political thicket" would, he suggested, "impair the Court's position as the ultimate organ of 'the supreme Law of the Land.' "[18] Justice Clark, moved by a sense of judicial duty, described Frankfurter's dissent as "bursting with words that go through so much and conclude with so little."[19] "I would not consider intervention by this Court," Clark observed, "into so delicate a field if there were any other relief available to the people of Tennessee. But the majority of the people of Tennessee have no practical opportunities for exerting their political weight at the polls."[20] As in 1946, Frankfurter's solution was an "informed, civically militant electorate" and "an aroused popular conscience."[21] But, Clark countered, these long continued electoral injustices do not, in fact, "sear 'the conscience of the people's representatives.' "[22] Reverting to Frankfurter's cherished principle of judicial self-restraint, Clark concluded: "It is well for this Court to practice self-restraint and discipline in constitutional adjudication, but never in its history have those principles received sanction where the national rights of so many have

[17] *Colegrove* v. *Green*, 328 U.S. 549, 553-54, 556 (1946). Justice Black, joined by Justices Douglas and Murphy, unpersuaded by Frankfurter's wariness lest the judicial activism in support of more equitable apportionment undermine our "democratic system," urged judicial action as "essential under a free government." Congressional districts should contain, they argued, as nearly as practicable an equal number of inhabitants (p. 574).

[18] *Baker* v. *Carr*, 267 (dissenting opinion).

[19] *Ibid.*, 251 (concurring opinion).

[20] *Ibid.*, 258-59 (concurring opinion).

[21] *Ibid.*, 270 (dissenting opinion).

[22] *Ibid.*, 259 (concurring opinion).

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been so clearly infringed for so long a time." As for Frankfurter's concern lest the Court suffer a self-inflicted wound, Clark declared: "National respect for the courts is more enhanced through the forthright enforcement of those rights [equitable representation] rather than by rendering them nugatory through the interposition of subterfuges."[23]

Baker v. *Carr* and its progeny were prompted by necessity. Positive judicial action alone could fulfill the commitment of 1776. For the urban majority, long under the yoke of rural minorities, the reapportionment decisions recall Jefferson's famous lines: "Prudence will dictate that governments long established should not be changed for light and transient causes." The judicial corrective came only after "a long train of abuses and usurpations, pursuing invariably the same object." All such considerations left Justice Frankfurter unmoved. On the altar of federalism and judicial self-restraint, an urban majority must remain under the rural dominance of an unreformed legislature.

Justice Frankfurter's unsuccessful plea for judicial self-restraint on the reapportionment issue was destined to become his valedictory. Suffering a stroke in August 1962, he retired. But his absence has not silenced intra-Court rumblings against the exercise of judicial duty imposed by the Bill of Rights. In 1964, Justice Harlan dubbed the ruling that the equal protection clause, requiring seats in both houses of a bicameral state legislature be apportioned on a population basis, "an experiment in venturesome constitutionalism," "a radical alteration in the relationship between the states and the Federal Government," the substitution of the Court's view "of what should be so for the amending process." "The Constitution is not," he insists, "a panacea for every blot on the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movements."[24] Harlan upbraids the majority generally for assuming that "deficiencies in society which have failed of correction by other means should find a cure in courts."[25]

[23] *Ibid.*, 262 (concurring opinion).
[24] *Reynolds* v. *Sims*, 625.
[25] Address of John M. Harlan at the American Bar Center, Chicago, Aug. 13, 1963.

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The pattern of divergence in all these major decisions is the same—conflicting concepts of the judicial function, judicial self-restraint versus judicial duty. Justice Harlan's continuing complaint is that the Warren Court, enamored of the Bill of Rights and egalitarianism, "has forgotten the sense of judicial restraint which, with due regard for stare decisis, is one element that should enter into deciding whether a past decision of this Court should be overruled."[26]

Nor does Justice Harlan's charge of judicial usurpation stem solely from so-called neutralists. At the Court's session of June 7, 1965,[27] Justice Black, parting company with his erstwhile activist colleague, William O. Douglas, objected to reading the "Right to Privacy" into several provisions of the Bill of Rights. Recalling the Court's "proud pre-eminence"[28] before 1937, Black could find no more justification for embellishing the vague clauses of the Fourteenth Amendment with a liberalizing political theory than for enacting a restrictive economic dogma to safeguard economic privilege. General application of the constitutional right of privacy would, he said, "amount to a great unconstitutional shift of power to the Courts,"[29] tending to break down separation of powers and federalism—doctrines of major concern to Justice Harlan.

These critical reactions, focusing especially on the reapportionment decisions and rulings extending, under the Fourteenth Amendment, an increasing number of bill-of-rights provisions to the states, recall earlier complaints. Belying Hamilton's prediction in *The Federalist*, No. 78, that the judiciary will always be "the weakest," the "least dangerous" branch, no Court in our history has escaped Jefferson's charge of working "like gravity" to enlarge its jurisdiction.[30] The same note—abuse of power, the peril of judges stepping

[26] *Mapp* v. *Ohio*, 367 U.S. 643, 673 (1961).

[27] *Griswold* v. *Connecticut*, 381 U.S. 479 (1965).

[28] Language of Justice Gibson, criticizing the doctrine of judicial review, and described by Professor James Bradley Thayer as "the ablest discussion of the question which I have ever seen." *Eakin* v. *Raub*, 12 Sergeant and Rawle (Pa. Sup. Ct., 1825), 330. See, in this connection, Stanley I. Cutler, "John Bannister Gibson: Judicial Restraint and the 'Positive State,'" *Journal of Public Law*, XIV (1965), 181-97.

[29] *Griswold* v. *Connecticut*, 521.

[30] Paul Leicester Ford (ed.), *The Works of Thomas Jefferson* (New York and London, 1904-05), XII, 201-02.

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into the shoes of legislators—has been sounded throughout our history: in the debates on repeal of the Judiciary Act of 1801,[31] in Justice John Bannister Gibson's powerful indictment of John Marshall and judicial review in 1825,[32] in Professor James Bradley Thayer's classic plea of 1893 for judicial self-restraint,[33] in President Roosevelt's impassioned radio "chat" of March 9, 1937, calling for reorganization of the judiciary,[34] in the abortive Jenner-Butler crusade of 1957, designed to clip judicial wings in the enforcement of certain bill-of-rights provisions,[35] in Senator Dirksen's repeated attempts to undo by constitutional amendment the 1964 "one-man, one-vote" ruling on state legislative apportionment.[36]

The indictment against judicial activism (or usurpation) reached ominous proportions in 1958, when the chief justices of forty-eight states voted thirty-six to eight in support of a resolution condemning judicial policy-making in hasty decisions, "without proper judicial restraint." The attack was stepped up in 1962, when the Council of State Governments, seared by Supreme Court decisions upholding federal intervention into fields long considered immune —education, voting, representation, and the administration of criminal justice—proposed three far-reaching amendments.[37] One would permit state legislatures to amend the federal Constitution without consideration or discussion in any national forum. Another would make apportionment in the state legislatures immune to judicial action. The third would set up a super-Supreme Court—"Court of the Union"—consisting of the chief justices of the fifty states, em-

[31] Albert J. Beveridge, *The Life of John Marshall* (Boston, 1916), III, 50-100; Charles Warren, *The Supreme Court in United States History* (Boston, 1928), I, 188-230.

[32] See note 28.

[33] J. B. Thayer, "The Origin and Scope of the American Doctrine of Constitutional Law," *Harvard Law Review*, VII (1893), 129.

[34] Fireside Chat, March 9, 1937, in Samuel I. Rosenman (ed.), *The Public Papers and Addresses of Franklin D. Roosevelt* (New York, 1938-50), VI, 122-33.

[35] See Walter F. Murphy, *Congress and the Court: A Case Study in the American Political Process* (Chicago, 1962), 154-208.

[36] See "Legislative Apportionment: the latest proposal analyzed." Remarks of Senator Joseph D. Tydings, Oct. 5, 1965, in U.S., *Congressional Record*, 89th Congress, 1st Session, Appendix, 1-3; James C. Millstone, "Dirksen Hires Publicity Firm to Promote his Amendment," *St. Louis Post-Dispatch*, Feb. 5, 1966.

[37] For the full text of the proposed amendments, see *State Government*, XXXVI (1963), 1-15.

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powered to overrule Supreme Court decisions in cases involving federal-state relations.

Within a few months, this triple threat—the most defiant assertion of state sovereignty since the Civil War—was endorsed in whole or in part by twelve states. Noting widespread public apathy, Chief Justice Warren struck back, prodded members of the bar to initiate a "great national debate": "If proposals of this magnitude had been made in the early days of the Republic, the great national debate would be resounding in every legislative hall and in every place where lawyers, scholars, and statesmen gather."[38]

Judicial history is repeating itself, but not precisely. The Warren Court's dramatic intervention in the governing process echoes 1920-36 in boldness. But in the ends served there is no parallel. More illuminating antecedents may be found in the constitutional jurisprudence of John Marshall.[39] Like the bench Chief Justice Marshall headed (1803-35), the Warren Court is stirring a powerful current in our politics. Just as Marshall's fervent nationalism evoked violent criticism among Democratic-Republicans, so the Warren Court's defense of basic freedoms rouses bitter denunciation from those inclined to equate security with repression.

Chief Justice Marshall lived and worked under Jefferson's unrelenting lash. When, at the end of his long judicial career, the Philadelphia Bar paid him homage, the Chief Justice used the occasion to comment on his judicial stewardship, boasting that his Court had "never sought to enlarge judicial power beyond its proper bounds, nor feared to carry it to the fullest extent duty requires."[40] Sensitive to the narrow line that separates judicial *review* and judicial *supremacy*, Marshall thought he had met the demanding requirements of both *self-restraint* and *duty*. The provisions of the Constitution must, he held, neither "be restricted into insignificance, nor extended to objects not comprehended in them nor contemplated by its framers."[41]

American constitutionalism embodies more than a prescription against the disease Lord Acton immortalized: "Power corrupts,

[38] New York *Times*, May 23, 1963.

[39] See Fred Rodell, "It is the Earl Warren Court," New York *Times Magazine*, March 13, 1966; Robert G. McCloskey, "Reflections on the Warren Court," *Virginia Law Review*, LI (1965), 1229-70.

[40] Beveridge, IV, 522.

[41] *Ogden* v. *Saunders*, 12 Wheat. 213, 332 (1827).

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absolute power corrupts absolutely." Judicial review, like the Constitution itself, affirms as well as negates; it is both a power-releasing and power-breaking function. "The restraining power of the judiciary," Judge Cardozo wrote, "does not manifest its chief worth in the few cases in which the legislature has gone beyond the lines that mark the limits of discretion. Rather shall we find its chief worth in making vocal and audible the ideals that might otherwise be silenced, in giving them continuity of life and of expression, in guiding and directing choice within the limits where choice ranges."[42] John Marshall deserves to be remembered as much, if not more, for *McCulloch* v. *Maryland*,[43] in which the Court affirmed the power of Congress to incorporate a bank, nontaxable by the state, thus laying the foundations of national power, as for *Marbury* v. *Madison*[44] in which, for the first time, the Court set aside an act of Congress. Marshall did not repeat the prerogative he claimed for the judiciary. That remained for his successor, Chief Justice Taney, in the ill-fated *Dred Scott* case.

Jefferson fiercely denounced Marshall's constitutional jurisprudence, not because the Chief Justice used the judicial axe against acts of Congress. On occasion, as in the Alien and Sedition Acts, he criticized the Court for not doing so. Jefferson complained angrily of Marshall's affirmative use of the Court as a forum from which to expound nationalist principles at the expense of the states, the effect being "to undermine the foundations of our confederated fabric, . . . construing our constitution from a co-ordination of a general and special government to a general and supreme one alone."[45]

Chief Justice Marshall, Jefferson to the contrary notwithstanding, exhibited remarkable sensitivity to the solemn duty judicial power imposes. Believing that the Constitution is the "creature of the people's will," "a very great exertion" not "to be frequently repeated,"[46] he identified the ballot box as the restraint on which "the people must rely solely, in all representative governments. . . ."[47]

[42] B. N. Cardozo, *The Nature of the Judicial Process* (New Haven, 1921), 94.
[43] 4 Wheat. 316 (1819).
[44] 1 Cranch 137 (1803).
[45] Jefferson to Thomas Ritchie, Dec. 25, 1820, in Ford, XII, 177.
[46] *Cohens* v. *Virginia*, 6 Wheat. 264, 389 (1821); *Marbury* v. *Madison*, 176.
[47] *Gibbons* v. *Ogden*, 9 Wheat. 1, 197 (1824). Marshall applied the same standard to state acts: "The Constitution of the United States was not intended to

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For him the question whether a law, national or state, is void was a matter of "much delicacy," seldom "to be decided in the affirmative, in a doubtful case." But when impelled by "duty" to render such a judgment, the Court would, he said, "be unworthy of its station," if it were "unmindful of the solemn obligations which that station imposes."[48]

Judicial duty required him to take, on appeal, state court decisions in cases arising under the Constitution or laws of the United States, otherwise America would suffer the chaos of "hydra in government. . . ." Each state would "possess a *veto* on the will of the whole. . . . We have no more right to decline the exercise of jurisdiction which is given," he declared, "than to usurp that which is not given. The one or the other would be treason to the Constitution."[49] Judicial duty commanded the Chief Justice to save the charter of Dartmouth College against New Hampshire's attempt to destroy it.[50] Precluding state action was not only the constitutional injunction against impairing the obligation of contracts in Article 1, Section 10—"a Bill of Rights for the people of each State,"[51] he called it—but also the sanctity which enshrouds property and contract rights.

Marshall was as adept in fashioning political theory—"penumbra" to Mr. Justice Douglas, rights emanating from other rights—in defense of property as in support of his nationalist goals: "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if property of an individual, fairly and honestly acquired, may be seized without compensation?" In the same case, Justice Johnson went further, finding limitations on legislative power resting "on a general principle, on the reason and nature of things: a principle which will impose laws even on the Deity."[52]

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furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation; as well as against unwise legislation generally." *Providence Bank* v. *Billings*, 4 Peters, 514, 563 (1830).

[48] *Fletcher* v. *Peck*, 6 Cranch 87, 127 (1810).

[49] *Cohens* v. *Virginia*, 385, 415, 404.

[50] *Dartmouth College* v. *Woodward*, 4 Wheat. 518 (1819).

[51] *Fletcher* v. *Peck*, 138.

[52] 6 Cranch 87, 135, 143 (1810).

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Chief Justice Marshall insisted that judicial duty is heightened when political checks are ineffective or unavailable. When a state, as in *McCulloch* v. *Maryland*, taxes an instrumentality of the national government, "it acts upon institutions created, not by their own constituents, but by people over whom they claim no control."[53] Since the people of the United States were not represented in the Maryland legislature which enacted the offending law, the usual political restraints for correcting abuse of power were not operative, hence an enlarged judicial responsibility. The burden of Chief Justice Marshall's constitutional jurisprudence throughout is that the Supreme Court's primary task is positive and creative. He deplored any construction which attempts "to explain away the Constitution," leaving "it a magnificent structure . . . to look at, but totally unfit for use."[54] The judiciary, like other agencies of government, should facilitate achievement of the great objectives mentioned in the Constitution's Preamble.

Professor James Bradley Thayer, noting that constitutional law "is allied, not merely with history, but with Statecraft," singled out Chief Justice Marshall as one among a handful of American judges who were

> sensible of the true nature of their work and of the large method of treatment which it required, who perceived that our constitutions had made them, in a limited and secondary way, but a real one, coadjutors with the other departments in the business of government; but many have fallen short of the requirements of so great a function.[55]

In the mind of many Americans, including certain Supreme Court justices, judicial review is essentially negative, limiting, and undemocratic. Whenever government enters a new field, the natural question is whether the action is constitutional. Deploring this emphasis, the late Justice Frankfurter observed: "Preoccupation by our people with the constitutionality, instead of with the wisdom of legislation or of executive action, is preoccupation with a false value. . . . Focusing attention on constitutionality tends to make constitu-

[53] *McCulloch* v. *Maryland*, 435.
[54] *Gibbons* v. *Ogden*, 222.
[55] J. B. Thayer, *Cases on Constitutional Law* (Cambridge, 1895), I, Preface, v-vi.

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tionality synonymous with wisdom."[56] It suggests that the brakes of our constitutional machinery are more important than the ignition—more essential than the Court's legitimizing function; it ignores the task Judge Cardozo stressed—that of upholding American ideals.

Judicial review, as a barrier against governing, reached a high point in the middle nineteen-thirties. Of the eighty-eight congressional statutes declared unconstitutional throughout our history, eleven fell under the judicial axe in 1935-36.[57] The resulting impasse between Court and legislature, tying "Uncle Sam up in a hard knot,"[58] as Justice Stone observed, provoked President Roosevelt's disingenuous war on the judiciary. The upshot was a sudden judicial about-face, marked by massive breakdown of constitutional limitations—separation of powers, federalism, "due process of law," judicial review itself—previously invoked against government regulation of the economy. Soon thereafter a new era emerged, stressing judicial duty and responsibility. Under Earl Warren, as during John Marshall's long regime, the Supreme Court has become a creative force in American life.

II

What happened in 1937 has gone down in history as a judicial revolution. But was it? In America, revolution is a loosely used word. The revolutionary principle in America—that sovereign power resides in the people—is not, as James Wilson said, "a principle of discord, rancor or war; it is a principle of melioration, contentment and peace."[59] We have never had a real revolution in the changes wrought, nothing comparable to the upheavals attending the French and Russian Revolutions. Seventeen seventy-six did not sweep the slate clean, did not cut us off from our heritage.[60]

[56] *Dennis* v. *United States*, 341 U.S. 494, 556 (1951). Frankfurter had voiced these same sentiments in the *New Republic*, June 17, 1925.

[57] Since 1937 a short but increasing list of congressional acts (eleven to date) has been set aside.

[58] H. F. Stone to his sister, June 2, 1936, quoted in my *Harlan Fiske Stone: Pillar of the Law* (New York, 1956), 426.

[59] Quoted in Charles Page Smith, *James Wilson: Founding Father* (Chapel Hill, 1956), 312.

[60] Edmund Burke compared 1776 to the Glorious Revolution of 1688—"a revolution not made, but prevented." Quoted by Russell Kirk in Introduction to

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The Constitution of 1789 has been considered a revolutionary departure from the Declaration of Independence. Not so, John Quincy Adams insisted. These were parts of "one consistent whole," a logical sequence in one continuous effort, laying the foundations of government in reason and consent.[61] When Anti-Federalists, fearful of consolidated power, argued for a bill of rights, Hamilton explained: "The constitution is itself, in every rational sense, and to every useful purpose, *A Bill of Rights*."[62] Besides specific provisions limiting state power in behalf of individual rights, such as Article 1, Section 10,[63] (itself a bill of rights for Chief Justice Marshall), the Constitution embodies certain freedom-protecting principles—notably separation of powers, federalism, and judicial review.

Anti-Federalists were unconvinced; they wanted a bill of rights. When they got it, Jefferson and Madison recognized that the strongest argument in favor of the Bill of Rights was the not unnatural assumption that its provisions would be enforced by courts. Needed were specific criteria fixing the limits of national power in relation to the rights of individuals. Madison hesitated; Jefferson spurred him on, pointing out that the argument in favor of a declaration of rights of "great weight with me" is "the legal check which it puts into the hands of the judiciary."[64] In submitting the proposed amendments to the first Congress, Madison, now Jefferson's convert, predicted:

Frederick Gentz, *The French and American Revolutions Compared*, translated by John Quincy Adams (Chicago, 1955). Said Gentz: "The revolution of America was, therefore, in every sense of the word, a revolution of necessity. England, alone, had by violence effected it: America had contended ten years long, not against England, but against the revolution: America sought not a revolution; she yielded to it, compelled by necessity, not because she wished to extort a better condition than she had before enjoyed, but because she wished to avert a worse one prepared for her". (p. 56).

[61] J. Q. Adams, *Jubilee of the Constitution: A Discourse Delivered at the Request of the New York Historical Society, April 30, 1839* (New York, 1839), 15-18.

[62] Max Beloff (ed.), *The Federalist* (New York, 1948), No. 84, pp. 440-41. See also James Wilson, State House Speech in Philadelphia, Oct. 10, 1787, in A. T. Mason, *The States Rights Debate: Antifederalism and the Constitution* (Englewood Cliffs, N.J., 1964), 125-29.

[63] "No state shall . . . pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

[64] Thomas Jefferson to James Madison, March 15, 1789, in Boyd, XIV, 659-61.

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> [If the Bill of Rights is] incorporated in the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or the executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.[65]

In 1789, the Bill of Rights was an almost forgotten appendage. For Chief Justice Warren its provisions constitute "the heart of any constitution."[66] In the beginning, as now, its chief worth lay in judicial responsibility for its enforcement.

The Anti-Federalist campaign was both a great success and an enduring disappointment. Gained were constitutional safeguards for speech, press, religion, right of assembly, and procedural guarantees for persons accused of crime. Lost was the primary objective —constitutional protection for the states, a line or marker specifically safeguarding local authority against federal encroachments. Achieved was a constitutional redundancy—the Tenth Amendment —"the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people." In effect its purpose, Chief Justice Marshall explained, was that of a tranquilizer to quiet "the excessive jealousies which had been excited."[67] Despite the Tenth Amendment, the national government is supreme in the exercise of its delegated and implied powers.

As the Constitution left the hands of the framers and as amended by the Bill of Rights, despite persistent effort to achieve it, no precise line was drawn delineating national power in the interest of the states. The powers of the national government, though enumerated, were "undefined" and "indefinite." Alert to possible inroads on the states, Hugh Williamson of North Carolina objected that the effect might be to "restrain the States from regulating their internal" affairs. Indefinite power in the central authority would, Elbridge Gerry objected, "enslave the States." Hamilton, Madison, and Wilson stood firm, the latter explaining that it was impossible to

[65] U.S. Congress, *Annals of Congress*, I, 1st Congress, 1st Session, June 8, 1789 (Washington, D.C., 1834), 457.

[66] Henry M. Christman (ed.), *The Public Papers of Chief Justice Earl Warren* (New York, 1959), 7.

[67] *McCulloch* v. *Maryland*, 406.

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draw a line dividing state and national powers. "[W]hen we come near the line," he explained, "it cannot be found. . . . [A] discretion must be left on one side or the other. . . . Will it not be most safely lodged on the side of the National Government? . . . What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?" Even Hamilton denied any intention to create a consolidated system. When it was suggested that he wished to "swallow up" the States, he protested, declaring that he "had not been understood. . . . By an abolition of the States, he meant that no boundary could be drawn between the National & State legislatures; that the former must therefore have *indefinite* authority. If it [national authority] were limited at all, the rivalship of the States would gradually subvert it."[68]

The states were to be retained in so far as they could be "subordinately useful." "It was impossible," Madison told the first Congress, "to confine a government to the exercise of express powers; there must necessarily be admitted powers by implication, unless the constitution descended to recount every minutia."[69] The Tenth Amendment had left federal-state relations unchanged.

With good reason, advocates of a Bill of Rights were profoundly disappointed. Instead of "substantial provisions," Pierce Butler complained, Madison had proposed "a few *milk-and-water* amendments, . . . such as liberty of conscience, a free press, and one or two general things already well secured." "I suppose it was done," Butler speculated as to Madison's strategy, "to keep his promise with his constituents, to move for alterations, but if I am not greatly mistaken, he is not hearty in the cause of amendments."[70] In 1790, the Tenth Amendment was recognized for what it was—a gold brick.

The states'-rights failure of 1790 was compounded in 1868 by the adoption of the Fourteenth Amendment, providing safeguards against state power broad enough to cover the restrictions Madison

[68] Max Farrand (ed.), *Records of the Federal Convention of 1787* (rev. ed.; New Haven, 1937), I, 323, 165, 170, 166-67, 323 (emphasis added).

[69] *Annals of Congress*, I, 790.

[70] Pierce Butler to James Iredell, Aug. 11, 1789, in Griffith McRee, *Life and Correspondence of James Iredell* (New York, 1857), II, 265.

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sought vainly to win in 1790—"No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases."[71] At the outset, however, a sharply divided Court, refusing "to fetter and degrade the state governments," declined to become, under the Fourteenth Amendment's sweeping provisions, "a perpetual censor" of state activities. To do so, a five to four majority argued, would radically change "the whole theory of the relations of the State and Federal Governments,"[72] a relationship apparently immune even to the amending process. In a vehement dissent, Justice Field declared that the effect was to make the Fourteenth Amendment "a vain and idle enactment." State grants of "exclusive privileges" to entrepreneurs, as in this case, he argued, "are opposed to the whole theory of free government, and it requires no aid from any bill of rights to render them void. That only is a free government, in the American sense of the term, under which the inalienable right of every citizen to pursue his happiness is unrestrained, except by just, equal, and impartial laws."[73]

For dissenting Justice Field, judicial protection of property and contract rights was a judicial duty, imposed not only by the Fourteenth Amendment but also by "the fundamental idea of free government." A decade later, John M. Harlan, grandfather of the present Justice Harlan, affirmed congressional recognition of another category of freedoms—"full and equal enjoyment," under the Fourteenth Amendment, of "the accommodations, advantages, facilities, and privileges of inns, public conveyances, and theatres."[74] In the *Civil Rights Cases* of 1883, Justice Field dissenting, Harlan foreshadowed the School Desegregation decisions of the nineteen-fifties and the constitutionality of the 1964 Civil Rights Act.[75] In his *Hurtado* dissent of 1884,[76] Justice Harlan (Field not participating) anticipated Justice Black's increasingly successful campaign to bring the entire Bill of Rights under the broad umbrella of the Fourteenth Amendment.[77] Nor was the elder Justice Harlan content merely to rely on provisions of the Constitution. Like Chief Justice

[71] *Annals of Congress*, I, 452.
[72] Justice Miller in *Slaughter-House Cases*, 16 Wall. 36, 78 (1873).
[73] *Ibid.*, 111.
[74] Dissenting in *Civil Rights Cases*, 109 U.S. 3, 27 (1883).
[75] *Heart of Atlanta Motel, Inc.* v. *U.S.*, 379 U.S. 241 (1964).
[76] *Hurtado* v. *California*, 110 U.S. 516 (1884).
[77] This effort was launched in *Adamson* v. *California*, 332 U.S. 46 (1947).

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Marshall in 1810 and Justice Field in 1873, he cited a supporting theory—"the great and essential principles of free government."[78]

In the eighteen-nineties when the judiciary finally became, under the Fourteenth Amendment, what a majority of five in 1873 insisted it must not be, "a perpetual censor," when it became, as President Arthur Twining Hadley of Yale put it in 1908, "an arbiter" between "the voters on the one hand and the property owners on the other,"[79] the change seemed revolutionary. Indeed, that is what dissenting justices, including the elder Justice Harlan, called it. But this judicial "revolution" was not unlimited. Thereafter judicial activists were subjected to the unremitting barbs of Holmes, Brandeis, and Stone, all reiterating James Bradley Thayer's argument of 1893, that "the judicial function is merely that of fixing the outside border of reasonable legislative action. . . . The Constitution does not impose upon the legislature any one specific opinion, but leaves open this range of choice; . . . whatever choice is rational is constitutional." For Thayer, godfather of the modern "self-restraint" doctrine, the judicial function involves "taking a part, a secondary part, in the political conduct of government." In an essay, singled out by Justice Frankfurter as "the great guide for judges and therefore, the great guide for understanding by non-judges of what the place of the judiciary is in relation to constitutional questions,"[80] Thayer warned that the Supreme Court would "imperil" its entire jurisdiction "if it is sought to give them more. . . ."[81]

III

Until 1937, Thayer's sober counsel was to no avail. America then witnessed what some considered a real revolution—the famous "switch in time," a sudden judicial about-face. Endorsing Thayer's principle of self-restraint, the Court then upheld the National Labor Relations Act and a state minimum wage law, overturning freshly established precedents. The piercing wails of justices recently dethroned suggested catastrophe, revolution. "The Constitution is gone,"[82] Justice McReynolds clamored, and so it was—*his* Consti-

[78] *Hurtado* v. *California*, 557.
[79] *The Independent*, LXIV (1908), 837.
[80] *Felix Frankfurter Reminisces* (New York, 1960), 300.
[81] Thayer, "Doctrine of Constitutional Law," 129-56 *passim*.
[82] Quoted in Mason, *Stone*, 391.

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tution. Dissenting from the five to four decision upholding the Minnesota Mortgage Moratorium statute of 1933, Justice Sutherland challenged: "If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned."[83] Sutherland's vaunted Constitution that "pinches" was ended.

The intransigent ghost of Rufus W. Peckham, Justice Holmes' major target in 1905,[84] still haunted judicial interpretation. In 1922, Professor Felix Frankfurter asked Justice Holmes about Peckham. "I used to say," Holmes responded, "his major premise was God damn it. Meaning thereby that emotional predilections somewhat governed him on social themes."[85] Repudiating the economic penumbra Justice Peckham fashioned around the "due process" clause of the Fourteenth Amendment, Holmes insisted that the Constitution does not enact any particular economic dogma; it is not "the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus*."[86]

Holmes' views, long in minority, are now triumphant. Speaking in 1963 for a unanimous Court, Justice Black declared:

> We refuse to sit as a "superlegislature to weigh the wisdom of legislation," and we emphatically refuse to go back to the time when the courts used the "Due Process Clause" to strike down state laws regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought. . . . Whether the legislature takes for its text book Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours.[87]

By 1937 the Court had become the primary, rather than an auxiliary, check on government. It had come to think of itself, Justice Stone complained, as "the only agency of government that must be assumed to have capacity to govern."[88] Under fire the

[83] *Home Building and Loan Association* v. *Blaisdell*, 290 U.S. 398, 483 (1934).
[84] *Lochner* v. *New York*, 198 U.S. 45 (1905).
[85] Quoted in A. M. Bickel, *Unpublished Opinions of Mr. Justice Brandeis* (Cambridge, 1957), 164.
[86] *Otis* v. *Parker*, 187 U.S. 606, 609 (1903).
[87] *Ferguson* v. *Skrupa*, 372 U.S. 93, 98 (1963).
[88] Justice Stone, dissenting in *United States* v. *Butler*, 297 U.S. 1, 87 (1936).

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justices relinquished what they had usurped. The Court did not abdicate.

Professor Corwin called the ignominious judicial somersault of 1937 *Constitutional Revolution Ltd.*[89] Hereafter, he predicted, the Court would pay greater deference to the policy-forming organs of government and be less concerned with the wisdom of social and economic legislation. Corwin suggested that the Court, having abandoned guardianship of property, would still have plenty to do if it intervened "on behalf of the helpless and oppressed";[90] it would then "be free, as it has not in many years, to support the humane values of free thought, free utterance, and fair play."[91] Surrender of its self-acquired role as protector of economic privilege would allow the Court "to give voice to the conscience of the country."[92] These prophetic words, reminiscent of Jefferson's argument of 1789 in favor of a bill of rights—the "legal check" it places in the hands of the judiciary—were written in 1940. Looking back as well as ahead, Corwin noted in 1941: "Constitutional law has always a central interest to guard."[93]

The Warren Court's remarkable fulfillment of Corwin's prognostications has provoked fierce attack, from within as well as from without the Court. At issue among the justices are basic constitutional verities—federalism and the Bill of Rights—and the Court's responsibility toward them. Upholding values long identified with the late Justice Frankfurter, and in the face of his grandfather's assertion of judicial duty in the *Civil Rights* and *Hurtado* cases, Justice Harlan deplores what he considers the majority's mad rush to bring an ever-increasing number of Bill of Rights provisions under the equal protection and due process clauses of the Fourteenth Amendment at the expense of federalism and separation of powers, values which, he insists, "lie at the root of our constitutional system."[94]

[89] E. S. Corwin, *Constitutional Revolution, Ltd.* (Claremont, Calif., 1941).

[90] *Idem*, "Some Probable Repercussions of 'NIRA' on Our Constitutional System," *Annals of the American Academy of Political and Social Science*, CLXXII (1934), 142.

[91] *Idem*, "Statesmanship on the Supreme Court," *American Scholar*, IX (1940), 159, 163.

[92] *Idem*, *Constitutional Revolution*, 110-12.

[93] *Idem*, *The Constitution and What It Means Today* (7th ed.; Princeton, 1941), Preface, viii.

[94] Address at the American Bar Center, Chicago, Aug. 13, 1963.

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"We are accustomed," Justice Harlan observes, "to speak of the Bill of Rights and the Fourteenth Amendment as the principal guarantees of personal liberty. Yet it would surely be shallow not to recognize that the structure of our political system accounts no less for the free society we have." The Founding Fathers "staked their faith that liberty would prosper in the new nation not primarily upon declarations of individual rights but upon the kind of government the Union was to have." "No view of the Bill of Rights or interpretation of any of its provisions," the Justice warns, "which fails to take due account of [federalism and separation of powers] can be considered constitutionally sound."[95]

For Justice Harlan, the decisions asserting judicial responsibility for "one man, one vote" "cut deeply into the fabric of our Federalism," representing entry into an area "profoundly ill-advised and constitutionally impermissible."[96] Echoing the concern voiced in 1873, when the Court refused to become, under the sweeping provisions of the Fourteenth Amendment, "a perpetual censor upon all legislation of the states,"[97] Harlan believes that the end achieved would be "at the cost of a radical alteration in the relationship between the States and the Federal Government, more particularly the federal judiciary."[98] Extending to accused persons in state courts the safeguards available to them in the federal courts is denounced as "historically and constitutionally unsound and incompatible with the maintenance of our federal system. . . ."[99]

It is "the very essence of American federalism," Justice Harlan wrote in 1958, "that the States should have the widest latitude in the administration of their own system of criminal justice."[100] Such diversity, he insists, is inherent in federalism. Judicial censorship of obscene and indecent literature trenches on the "prerogative of the states to differ on their ideas of morality," denying both nation and states the advantage of having fifty laboratories of experimentation

[95] John M. Harlan, "The Bill of Rights and the Constitution," address at the dedication of the Bill of Rights Room, U.S. Subtreasury Building, New York City, Aug. 9, 1964.

[96] *Reynolds* v. *Sims*, 624.

[97] Justice Miller, speaking for a five to four majority in *Slaughter-House Cases*, 78.

[98] *Reynolds* v. *Sims*, 624.

[99] *Pointer* v. *Texas*, 380 U.S. 400, 409 (1965).

[100] *Hoag* v. *New Jersey*, 356 U.S. 464, 468 (1958).

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for trying out "different attitudes toward the same work of literature."[101]

IV

Two basic issues divide the Warren Court: first, the relative claims of the Bill of Rights on the one hand, and federalism and separation of powers, on the other, to judicial guardianship as safeguards of freedom; second, whether economic dogma, such as *laissez faire*, has any greater claim to judicial consideration than political ideology—"one man, one vote," "unrestrained egalitarianism." In 1873, and for many years thereafter, Justice Field, disregarding the claims of federalism, took up the cudgels in favor of economic dogma as a bulwark for economic enterprise. The elder Justice Harlan, on the other hand, invoked political ideology, the principles of free government, as justifying judicial protection of civil liberties. At the moment the Bill of Rights and political ideology are in the ascendancy, but Justice Harlan has, as we shall see, recently annexed fresh support.

Justice Harlan's wide-flung strictures revive the eighteenth-century debate between Federalists and Anti-Federalists as to whether a bill of rights was a necessary supplement to the protection afforded by federalism and separation of powers. Rejuvenated also is a variant of "dual federalism," the doctrine that certain subject-matter, notably the administration of criminal justice, is peculiarly within the domain of the states. Justice Harlan's indictment also recalls the charges dissenters Holmes and Stone hurled against the Court when, in deference to economic theory, a majority vetoed government regulation of the economy. In 1905, Holmes insisted that the Constitution must not be equated with any particular *economic* theory;[102] in 1966 Justice Harlan insists that the Constitution embodies no particular *political* theory. "One man, one vote" is, he declares, a judicial creation, a "political theory," "a piece of political ideology," reflecting "the Court's view of what is constitutionally permissible."[103] Yet "a particular theory" of federalism and separation of powers has his strong endorsement.

On April 5, 1965, shortly before he doffed judicial robes to be-

[101] *Roth* v. *United States*, 354 U.S. 476, 505 (1957).
[102] *Lochner* v. *New York*, 74.
[103] *Reynolds* v. *Sims*, 555.

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come Ambassador to the United Nations, Justice Goldberg made a point-by-point reply to "Brother Harlan." Goldberg noted that Harlan's bugaboo, his grandfather's and Justice Black's "incorporation" theory, had made notable progress. Now included among the Fourteenth Amendment's guarantees against infringement by the states are the liberties of the First, Fourth, Fifth, Sixth, and Eighth amendments. Goldberg did not accept Justice Harlan's easy transition from Brandeis' claims for the advantages of federalism in the field of economics to the area of civil rights. "While I agree with Justice Brandeis," Goldberg observed tartly, "that it is one of the happy incidents of the federal system that . . . a state may . . . serve as a laboratory, and try novel social and economic experiments, . . . I do not believe that this includes the power to experiment with the fundamental liberties of citizens safeguarded by the Bill of Rights."[104]

Nor did Justice Goldberg believe that Harlan's restrictive view of judicial duty would advance any legitimate state interest. Said Goldberg: ". . . to deny to the states the power to impair a fundamental constitutional right is not to increase federal power, but, rather, to limit the power of both federal and state governments in favor of safeguarding the fundamental rights and liberties of the individual."[105] Since *Gideon* v. *Wainwright*,[106] guaranteeing a Florida indigent his constitutional right to counsel, twenty-six states have instituted vital reforms in their criminal procedure. "I didn't start out," the triumphant Clarence Gideon observes, "to do anything for anybody but myself, but this decision has done a hell-uva lot of good. . . ."[107]

The day when law enforcement officers could do pretty much as they pleased is past. *Mapp* (1961) holds that evidence obtained by search and seizure in violation of the Fourth Amendment is inadmissible in a state court, as in a federal court; *Escobedo*[108] (1964) guarantees the right to counsel under the Sixth and Fourteenth Amendments; *Miranda et al.*[109] (1966) extends the Fifth Amend-

[104] *Pointer* v. *Texas*, 410-13.
[105] *Ibid.*, 414.
[106] 372 U.S. 335 (1963).
[107] *Time*, Dec. 17, 1965, 39.
[108] *Escobedo* v. *Illinois*, 378 U.S. 478 (1964).
[109] *Miranda* v. *Arizona*, decided June 13, 1966. Advance Supreme Court Reports, Lawyers' ed., July 6, 1966, pp. 694-764.

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ment's privilege against self-incrimination to the police station. Justice Harlan dissented in all these cases. Pleading the necessity of preserving "a proper balance between state and federal responsibility in the administration of criminal justice,"[110] he denounces the new rules as a "hazardous experimentation."[111] "The Court," Harlan warns, "is taking a real risk with society's welfare in imposing its new regime on the country."[112] The new rules, he believes, are "most ill-conceived and seriously and unjustifiably fetter perfectly legitimate methods of criminal law enforcement."[113]

Goldberg was unconvinced. In answer to complaints that police chiefs and district attorneys are being handcuffed in the performance of their duties, he retorted: "No system worth preserving should have to *fear* that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system."[114] In an opinion for a unanimous court, Justice Black declared that the "Sixth Amendment's right of an accused to confront the witnesses against him is . . . a fundamental right and is made obligatory on the states by the Fourteenth Amendment. . . . [This is] an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal."[115]

Nor has more equitable representation, in response to judicial command, weakened the states, or encouraged, as Justice Harlan anticipated, "inertia in efforts for political reform through the political process." In May 1966, the Council of State Government reported that thirty-seven states, under court orders, had reapportioned one or more houses of their legislatures.[116] In time, reapportionment, in progress on a broad front, may better equip the states to meet twentieth-century needs, revitalizing rather than disabling these essential units of local government.

In June 1965, Justice Harlan's campaign for judicial self-restraint won significant, though qualified, support from Justice Black, there-

[110] *Mapp* v. *Ohio*, 680.
[111] *Miranda* v. *Arizona*, 748.
[112] *Ibid.*
[113] *Escobedo* v. *Illinois*, 492.
[114] *Ibid.*, 490.
[115] *Pointer* v. *Texas*, 403, 405.
[116] *U.S. News and World Report*, June 20, 1966, p. 50.

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tofore a fierce antagonist. Speaking for the Court in *Griswold* v. *Connecticut*,[117] Justice Douglas invoked amendments 1, 3, 4, 5, 6, 9, and 14. In none, however, was there a specific bar against Connecticut's anti-contraceptive statute. Douglas found the constitutional killer in the right of privacy, in "penumbras, formed by emanations from those guarantees that give them life and substance." The right of privacy, the majority's spokesman declared, is "older than our political parties, older than our school system."[118] This was too much for Justice Black. In dissent, he recalled the danger of falling into the judicial trap from which the Court had narrowly extricated itself in 1937—the ever-seductive snare of judicial pre-eminence. "Subjective considerations of 'natural' justice," Black warned, are "no less dangerous when used to enforce this Court's views about personal rights than those about economic rights." "I get nowhere in this case," the Justice went on, "by talk about a constitutional 'right of privacy' as an emanation of one or more constitutional provisions. . . . I like my privacy as well as the next one," the eighty-year-old Justice commented feelingly, "but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision." Black cautioned against reinstating *Lochner* "and other cases from which this Court recoiled in 1937. . . ." Apparently, the dissenting Justice noted, "my Brethren have less quarrel with economic regulations than former Justices of their persuasion had."[119] For Justice Black, "penumbra" of whatever orientation permits judges to enforce their predilections as law.

Justices Black and Harlan dissented again in the six to three decision, March 24, 1966, declaring unconstitutional the poll tax as a voting qualification. In protest against reading current political theory into the Constitution, Justice Harlan wrote:

> Property and poll-tax qualifications, very simply, are not in accord with current egalitarian notions of how a modern democracy should be organized. It is of course entirely fitting that legislatures should modify the law to reflect such changes in popular attitudes. However, it is all wrong, in my view, for the Court to adopt the political doc-

[117] *Griswold* v. *Connecticut*, 479.
[118] *Ibid.*, 486.
[119] *Ibid.*, 530-31, 538-39.

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> trines popularly accepted at a particular moment of our history and to declare all others to be irrational and invidious, barring them from the range of choice by reasonably minded people acting through the political process. It was not too long ago that Mr. Justice Holmes felt impelled to remind the Court that the Due Process Clause of the Fourteenth Amendment does not enact the laissez-faire theory of society. . . . The times have changed, and perhaps it is appropriate to observe that neither does the Equal Protection Clause of that Amendment rigidly impose upon America an ideology of unrestrained egalitarianism.[120]

Like Harlan, Justice Black objected to the Court's use of the equal protection clause "to write into the Constitution its notions of what it thinks is good governmental policy." The majority had found adherence to the original meaning of the Constitution "an intolerable and debilitating evil." It believed "that our Constitution should not be 'shackled to the political theory of a particular era,' and that to save the country from the original Constitution the Court must have constant power to renew it and keep it abreast with this Court's more enlightened theories of what is best for our society." Echoing Justice Sutherland's sentiments of an earlier era, Black declared war on this approach:

> When a "political theory" embodied in our Constitution becomes outdated . . . a majority of the nine members of this Court are not only without constitutional power but are far less qualified to choose a new constitutional political theory than the people of this country proceeding in the manner provided by Article V.[121]

Justice Black's dissenting opinion in the poll tax case continues the campaign he launched in 1947 against the "natural justice formula"[122] (which he had himself endorsed in *Palko*[123] and of which Justice Harlan approves) permitting Supreme Court justices to pick and choose what provisions of the Bill of Rights are incorporated into the Fourteenth Amendment. Under this formula, the Court was licensed, Black declares, "to roam at large in the

[120] *Harper* v. *Virginia State Board of Elections*. Advance U.S. Supreme Court Reports, July 15, 1966, 183-84.
[121] *Ibid.*, 178-79.
[122] *Adamson* v. *California*.
[123] *Palko* v. *Connecticut*, 302 U.S. 319 (1937).

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broad expanses of policy and morals and to trespass, all too freely, on the legislative domain of the States as well as the Federal Government." Black would narrow the range of judicial discretion by extending "to all the people of the Nation the complete protection of the Bill of Rights."[124] Justice Black, resting apparently under the comfortable illusion that the provisions of the Bill of Rights are mathematically precise, seems to believe that their incorporation into the Fourteenth Amendment would leave no room for theorizing or judicial choice.

At issue within the Court and in the country, is the role of the judiciary in a free society; rehearsed is the age-old dichotomy concerning judicial restraint and judicial duty. The late Justice Frankfurter, an Anglophile much impressed with the virtues of the British system of free government, held that "judicial review is itself a limitation on popular government."[125] Of course it is, and that is precisely what the framers intended it to be. But any implication that judicial review is, therefore, suspect as an alien intruder is mistaken. An informed student of the American political tradition might rewrite Frankfurter's statement: "Judicial review is but one among several auxiliary precautions the framers considered essential to the functioning of the American system of *free government*"; or, in the late Edward S. Corwin's pithy epigram, judicial review is "democracy's way of covering its bet."[126] "Those who won our independence," Justice Brandeis noted in 1927, "recognizing the occasional tyrannies of governing majorities, . . . amended the Constitution so that free speech and assembly should be guaranteed."[127]

The shift from constitutional limitations, featuring federalism and separation of powers, and applied, prior to 1937, to economic regulations, to constitutional limitations and affirmations grounded in the Bill of Rights is reflected in a host of Warren Court rulings. Cases dealing with civil liberties now claim the lion's share of the Court's work load. In its 1935-36 term, there were 160 decisions in which opinions were written. Of these, only two were in the area

[124] *Adamson* v. *California*, 89-90.

[125] *Minersville School District* v. *Gobitis*, 310 U.S. 586 (1940). See note 141, below.

[126] Review of B. F. Wright, *Growth of American Constitutional Law* in *Harvard Law Review*, LVI (1942), 487.

[127] *Whitney* v. *California*, 274 U.S. 357, 376 (1927).

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of civil rights and liberties. In 1960-61, fifty-four of the 120 decisions in which opinions were prepared concerned civil rights and liberties. There were twenty-eight such cases in 1961-62, forty-two in 1962-63, thirty-nine in 1964-65.[128] These figures afford a measure of the Warren Court's dynamic role in giving reality to the Bill of Rights. Fulfilled are Jefferson's and Madison's forecast of 1789, that enforcement of the Bill of Rights would become the special concern of the judiciary.

The paralyzing action of the Hughes Court, preventing social and economic experimentation, is now recognized as indefensible and self-defeating. Has the Warren Court's activism as guardian of civil liberties any higher claims to justify it?[129]

In the simple context of the early nineteen-hundreds, resolution of the liberty versus restraint paradox involved, as Justice Peckham put it, "a question of which two powers or rights shall prevail —the power of the state to legislate or the right of the individual to liberty of person and freedom of contract."[130] Underlying constitutional interpretation in the nineteen-twenties was Chief Justice Taft's conviction that "the Constitution was intended, its very purpose was to prevent experimentation with the fundamental rights [property and contracts] of the individual."[131] Encroachments on "liberty of contract" were then accorded "searching judicial scrutiny." Though the expression had not yet been coined, it was the "preferred freedom." A Federal District Court judge struck a deep vein in our culture in 1922 when he declared: "Of the three fundamental principles which underlie government, and for which gov-

[128] For these calculations, I am indebted to The Commission on Law and Social Action of the American Jewish Congress. Summary and Analysis of the U.S. Supreme Court, 1964-65 Term.

[129] Commentators have tended to shy away from this question. In his brilliant "Reflections on the Warren Court," Robert G. McCloskey concludes that "on the whole the history of the Warren Court suggests that the limit [of matters not practically amenable to close judicial supervision] has not yet been exceeded. The Supreme Court *can* play its modern, elevated governmental role in the foreseeable future. Whether it *should* is a question that has been deliberately excluded from the scope of this article" (p. 1270). The question which Professor McCloskey expressly excludes is, of course, the one with which this article is primarily concerned.

[130] *Lochner* v. *New York*, 57.

[131] *Truax* v. *Corrigan*, 257 U.S. 312, 338 (1921).

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ernment exists, the protection of life, liberty and property, the chief of these is property."[132]

The dramatic shift under Chief Justice Warren to a new category of preferred freedoms reflects his conception of law as a living process, responsive to human needs. For the present Chief Justice, "the issue . . . is not the individual against society; it is, rather, the wise accommodation of the necessities of physical survival with the requirements of spiritual survival."[133] "I am one," the Chief Justice declared, February 1, 1962, "who believes firmly that the Court must be vigilant against neglect of the requirement of our Bill of Rights and the personal rights that document was intended to guarantee for all time."[134]

Prior to 1937, the justices fashioned around the "due process" clauses and other constitutional provisions the economic theory of *laissez faire* to prevent government regulation of economic affairs. In recent years the Court has woven about the Constitution a cloak of political theory to protect and promote human dignity. Justices Black and Harlan protest vigorously, contending that judicial adornment of the Constitution by a rationalizing penumbra, of whatever description, is unjustified. But Justice Stone, who wrote the historic Carolene Products footnote,[135] from which the new dispensation of "preferred freedoms" flowered, reasoned otherwise.

In 1937, when the judicially created barriers crumbled, Stone, leader of the drive for judicial self-restraint, had been concerned lest the guarantees of civil liberties might thereafter be wanting as effective safeguards. What should be the new interest of judicial guardianship? Of course the baby must not be thrown out with the bath. The upshot was the famous footnote of three paragraphs. Stone did not go so far as to hold that no economic legislation would thereafter violate constitutional restraints, but he did suggest confining the Court's role narrowly in this area. Attached to this self-denying caveat were three adumbrations, indicating new fields of judicial action on behalf of what was later dubbed "pre-

[132] Judge Van Orsdel in *Children's Hospital* v. *Adkins*, 284 F. 613, 622 (1922).
[133] Earl Warren, "The Bill of Rights and the Military," *New York University Law Review*, XXXVII (1962), 200.
[134] *Ibid.*, 201-02.
[135] For the text of the footnote, see *United States* v. *Carolene Products Co.*, 304 U.S. 144, 151-54 (1938).

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ferred freedoms."[136] The first suggests that in cases involving First Amendment freedoms, already absorbed into the Fourteenth Amendment, the usual presumption of constitutionality might not be in order. The second declares that legislation restricting those political processes that might be available to bring about repeal of undesirable legislation might be given special judicial scrutiny. The third intimates that legislation affecting the rights of discrete and insular minorities—racial, religious, or national—may call for more "searching judicial inquiry."

Disavowing originality, Stone found support for these propositions in the opinions of Marshall, Holmes, Brandeis, Hughes, and Cardozo. Justice Stone did not document what he had in mind, but he could easily have done so. All the eminent jurists he mentioned had, from time to time, invoked political theory—a theory of the Constitution—to bolster their position. "The whole American fabric has been erected," Chief Justice Marshall declared, on the proposition "that the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness."[137] Popular consent was, he held, the foundation of free government. When the correction of governmental abuses is not forthcoming from the political process, Marshall claimed heightened responsibility for the judiciary.[138]

Justice Holmes, expressing the conviction that "the ultimate good desired is better reached by free trade in ideas," called this "the theory of our Constitution."[139] Convinced that the Bill of Rights "could not be kept unless we were willing to fight for them," he was inclined to "stand by them." "We forget that they [the Bill of Rights] had to be fought for and may have to be fought for again."[140] Stone recalled that Justice Holmes believed that judges

[136] Chief Justice Stone introduced this expression in *Jones* v. *Opelika*, 316 U.S. 584, 600, 608 (1942); Justice Douglas invoked it for the majority in *Murdock* v. *Pennsylvania*, 319 U.S. 105, 115 (1943). For a critical review of the career of the Carolene Products footnote and a vicious attack on the idea of preferred freedoms, see Justice Frankfurter in *Kovacs* v. *Cooper*, 336 U.S. 77, 90-97 (1949).

[137] *Marbury* v. *Madison*, 176.

[138] *McCulloch* v. *Maryland*, 435.

[139] Dissenting in *Abrams* v. *United States*, 250 U.S. 616, 630 (1919).

[140] Mark deWolfe Howe (ed.), *Holmes-Laski Letters* (Cambridge, 1953), I, 203, 529-30.

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"should not be too rigidly bound to the tenet of judicial self-restraint in cases involving civil liberties."[141]

Brandeis cited "a fundamental principle of the American Government" to justify the wide range accorded "freedom to think as you will and to speak as you think," tracing this priority to those "who won our independence," to men "who were not cowards," who "did not fear change."

> They [the framers] recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope, and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil councils is good ones.[142]

Brandeis discovered protection against police use of wire tapping not only in the Fourth Amendment's ban on unreasonable searches and seizures, but also in a "fundamental principle of the American government," the right to privacy—the right to be alone, the "most comprehensive of rights and the rights most valued by civilized men."[143]

Ardent exponent of civil liberties both on and off the Court, Chief Justice Hughes referred to the Bill of Rights as a barrier against "gusts of passion and prejudice which in misguided zeal would destroy the basic interests of democracy. We protect the

[141] Stone to Clinton Rossiter, April 12, 1941, in Mason, *Stone*, 516. Felix Frankfurter noted that "Justice Holmes attributed very different legal significance to those liberties of the individual which history has attested as the indispensable conditions of a free society from that which he attached to liberties which derived merely from shifting economic arrangements. These enduring liberties of the subject, in the noble English phrase, were, so far as the national government is concerned, specifically enshrined in the Bill of Rights. . . . Because these civil liberties were explicitly safeguarded in the Constitution, or conceived to be basic to any notion of the liberty guaranteed by the Fourteenth Amendment, Mr. Justice Holmes was far more ready to find legislative invasion in this field than in the area of debatable economic reform." Felix Frankfurter, *Mr. Justice Holmes and the Supreme Court* (Cambridge, 1938), 51, 76, 49-63 *passim*.

[142] *Whitney* v. *California*, 376-77.

[143] Dissenting in *Olmstead* v. *United States*, 277 U.S. 438, 478 (1928).

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fundamental rights of minorities in order to save democratic government from destroying itself by the excess of its own power."[144] As Chief Justice, Hughes led in restoring the belief that certain rights—freedom of speech, press, and religion—must be preserved "in order to maintain the opportunity for free discussion, to the end that government may be responsive to the people and that changes, if desired, may be obtained by peaceful means." "Therein," he declared, "lies the security of the Republic, the very foundation of Constitutional Government."[145]

In 1937, with the concurrence, ironically, of Justice Black, only Justice Butler dissenting, Cardozo suggested criteria for deciding which provisions of the Bill of Rights are incorporated into the Fourteenth Amendment. "We reach a different plane of social and moral values," Cardozo wrote, "when we pass to the privileges and immunities that have been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption." To be included, the right must constitute "the matrix, the indispensable condition of nearly every other form of freedom"; the right must be prerequisite to a system of "ordered liberty."[146] Under this vague rubric, the Court held that "double jeopardy" does not violate those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."[147]

In a dramatic confrontation with Justice Frankfurter concerning the meaning and requirements of judicial self-restraint, Justice Stone, in the forefront of opposition to judicial activists who used vague clauses of the Constitution to prevent regulation of economics, insisted that the self-restraint doctrine must not be employed to uphold the flag salute requirement in violation of religious scruples:

> The very terms of the Bill of Rights preclude, it seems to me, any reconciliation of such compulsions with the constitutional guaranties by a legislative declaration that they are more important to the pub-

[144] *Proceedings in Commemoration of the 150th Anniversary of the First Congress*, House Document No. 212, 76th Congress, First Session, March 4, 1939, p. 32.

[145] *De Jonge* v. *Oregon*, 299 U.S. 353, 365 (1937).

[146] *Palko* v. *Connecticut*, 326-27.

[147] *Ibid.*, 328, quoting *Hebert* v. *Louisiana*, 272 U.S. 312, 316 (1926).

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> lic welfare than the Bill of Rights. . . . The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey, if it is to adhere to that justice and moderation without which no *free government* can exist.[148]

The divergence between Stone and Frankfurter indicates disagreement as to the kind of government the framers established and the relation of the Court thereto. Frankfurter thought of the American system as "popular"; Stone referred to it as "free government." For Frankfurter legislative supremacy and majority rule were well-nigh inexorable commands. He was accustomed to draw British analogies and cite British decisions. But in America, unlike Britain, legislation cannot be equated with the popular will. When legislation comes to the Court for interpretation, it represents a popular will already deflected by various constitutional devices. Judicial review does limit popular government. In this sense, it is oligarchal. But, in this respect, it is not distinguishable from other undemocratic devices, including the presidential veto and the bicameral legislature. To impugn judicial review as oligarchal, as inconsistent with popular government, therefore requiring niggardliness in its legitimate use, is to cast a shadow on all those features supporting Madison's considered boast in *Federalist*, No. 14, that America "accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of government which have no models on the face of the globe."

V

"The idea of a Constitution, limiting and superintending the operations of legislative authority," James Wilson commented in the Pennsylvania Ratifying Convention of 1787, "seems not to have been accurately understood in Britain. . . . To control the power and conduct of the legislature by an overruling Constitution was an

[148] *Minersville School District* v. *Gobitis*, 605-07. (Italics added.) See, in this connection, the illuminating letter Frankfurter wrote Justice Stone, May 27, 1940, reprinted in full as an appendix to my *Security Through Freedom* (Ithaca, N.Y., 1955).

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improvement in the science and practice of government reserved to the American States."[149] The record of the Constitution's framing and ratification clearly reveals an intention to establish *free government*. It was recognized, as Hamilton said in *Federalist*, No. 22, that "the fabric of American empire ought to rest on the solid basis of the Consent of the People." But a complex of principles and devices—federalism, separation of powers, bills of rights, judicial review—restrains popular power and limits majority rule. The electorate, through its chosen representatives, can make government conform to its will. But the Constitution sets bounds, enforceable by nine politically non-responsible men. The resulting dilemma was once resolved by recourse to the patent fiction that the Court has no power; it merely applies the Constitution which, in some miraculous way, is always the highest expression of the people's will. Though this ancient theory still has certain defenders, it no longer satisfies. In the middle nineteen-thirties, when nine men, sometimes only five or six, defeated the power to govern at all levels, very nearly the last vestige of judicial mysticism vanished. Before the astonished eyes of critics and friends, the judicial veil was lifted. Government was allowed to govern.

Control of our economic life, unprecedented in scope, made the equitable and unimpeded functioning of the political process more important than ever before. The right to vote, "a fundamental polit-

[149] James DeWitt Andrews (ed.), *The Works of James Wilson* (Chicago, 1896), I, 542-43. In this connection, see the illuminating colloquy between Justice Frankfurter and Justice Douglas in *Perez* v. *Brownell*, 356 U.S. 44, 79 (1958), and *Kingsley Corp.* v. *Regents of New York*, 360 U.S. 684, 698 (1959). Of Justice Frankfurter's opinion for the majority in *Perez*, Justice Douglas wrote: "The philosophy of the opinion that sustains this statute is foreign to our constitutional system. It gives supremacy to the Legislature in a way that is incompatible with the scheme of our written constitution. A decision such as this could be expected in England where there is no written constitution, and where the House of Commons has the final say. But with all deference, this philosophy has no place here. By proclaiming it we forsake much of our constitutional heritage and move closer to the British scheme. That may be better than ours or it may be worse. Certainly it is not ours" (p. 625). In *Kingsley* Justice Douglas repeated his views on the fundamentals of the American scheme of free government: "Reference is made to British law and British practice. [No one except Justice Frankfurter had made any such reference.] But they have little relevance to our problem, since we live under a written Constitution. What is entrusted to the keeping of the legislature in England is protected from legislative interference or regulation here" (p. 698).

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ical right," because it is "preservative of all rights,"[150] is only the last step in a long development. Informed political action would be impossible if the climate of opinion discouraged free exchange of ideas. Without equal opportunity to utilize the crucial preliminaries —speech, press, assembly, petition—government by consent becomes an empty declamation. In a free society, majorities are always in flux. Tomorrow's majority may have a different composition and therefore different goals. Defense of the political rights of minorities thus becomes not the antithesis of majority rule, but its very foundation. The majority must leave open the political channels by which it can be replaced when no longer able to command popular support. The alternative may be violent overthrow, revolution. By protecting the integrity and unobstructed operation of the process by which majorities are formed, judicial review becomes a surrogate for revolution, contributing positively to government resting on consent.

The contradiction Judge Learned Hand thought he detected in the position of the new activists—tolerance toward experimental legislation in economics,[151] closer judicial scrutiny when First Amendment and other Bill of Rights freedoms are involved—is not that at all. More exacting supervision of the political process follows logically from the Court's greater reliance, after 1937, on political controls in the economic realm. This rationale derives strength not only from the Constitution's framers (not excluding Jefferson) but also from a host of judicial luminaries in our own time.

It is often said that the Supreme Court reflects the social conscience of a nation. In the desegregation decisions and others, including the rulings on reapportionment and right to counsel, the Warren Court has not only interpreted and enforced the social conscience, it has quickened it. In the abstract, it would have been better, perhaps, if encroachment on individual freedom, such as Connecticut's anti-contraceptive statute, Virginia's poll tax, and the police-state methods used in law enforcement, could have been remedied by the state legislature. But this was not done; the prospects were dim. As in school desegregation, reapportionment, and administration of

[150] *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886). Quoted by Justice Douglas in *Harper* v. *Virginia State Board of Elections*.

[151] Learned Hand, "Chief Justice Stone's Conception of the Judicial Function," *Columbia Law Review*, XLVI (1946), 698.

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criminal justice, failure of the states to protect individual liberties or undertake corrective measures drove the Court, in the face of delimiting precedents, into untrod fields. The justices faced an untoward condition, not a theory. Judge Cardozo, noting that *stare decisis* is not in the Constitution, expressed willingness "to put it there, . . . if only it were true that legislation is a sufficient agency of growth."[152]

American constitutionalism's continuing theme remains unchanged—that the individual and his freedom are basic. Altered is the content of these values. Formerly the Court assumed special guardianship of property and contract rights. Now the judiciary seems content to leave these to the mercy of political controls. Accorded more exacting scrutiny today are speech, press, and religion, the right to vote, the rights of the criminally accused, the rights of discrete and insular racial, religious, and national minorities, helpless in the face of a majority (or a minority) bent on curbing their freedom. Just as the Court formerly claimed preeminence as protector of tangible rights, so today it asserts special responsibility toward moral and spiritual values that lie at the base of our culture. Judicial concern for human values was not previously forthcoming. Reflecting on the constitutional jurisprudence of the nineteen-twenties, Professor Frankfurter explained: "That a majority of the Court which frequently disallowed restraints on economic power should so consistently have sanctioned restraints of the mind is perhaps only a surface paradox. There is an underlying unity between fear of ample experimentation in economics and fear of expression of heretical ideas."[153] Not least among the distinctive

[152] B. N. Cardozo, *Growth of the Law* (New Haven, 1924), 132-33.

[153] Frankfurter, *Holmes and the Supreme Court*, 62. The Court's application of the doctrine of preferred freedoms impaled Justice Frankfurter on the horns of a dilemma. In 1940, he had warmly approved of the Carolene Products footnote; regarding it as "basic," he took over "the essential aspect" of the distinction drawn therein. He had also recognized that Justice Holmes, his mentor, entertained a hierarchy of values. "There is truth," Frankfurter wrote in 1938, "behind the familiar contrast between rights of property and rights of man. But certainly in some aspects property is a function of personality. . . . Especially in a civilization like ours, where the economic independence of society is so pervasive, a sharp division between property rights and human rights largely falsifies reality. But the various aspects of human personality are not of equal worth. There is a hierarchy of values." *Ibid.*, 49. In 1943, however, Justice Frankfurter declared that "the Constitution does not give us greater veto power in dealing

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accomplishments of the Warren Court is its alertness to a subtlety to which Justice Frankfurter, ignoring the commanding lessons of his mentors Holmes and Brandeis, seemed insensitive. Our fourteenth Chief Justice has made "vocal and audible ideals that might otherwise be silenced."

For correction of "great mistakes in the ruling part," John Locke observed, "the appeal lies nowhere but to Heaven"—apparently a euphemism for force, revolution. In providing a mediator between state and nation and between legislature and people, judicial review furnishes a practical alternative to revolution. Without the advantage of hindsight, the framers understood that "those who make peaceful revolution impossible will make violent revolution inevitable."[154] In their *Federalist* essays, Hamilton and Madison freely endorsed the *moral* right of revolution but, dreading the unsettling consequences[155] of the very forces 1776 unleashed, they were at great pains to demonstrate that the proposed Constitution reduced the occasions for revolution to a minimum. Jefferson, in later years the Court's bitter critic, advocated binding up "the several branches of government by certain laws, which, when they transgress, their acts become nullities," suggesting that this would "render unneces-

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with one phase of liberty than with another." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 648 (dissent).

[154] See also W. S. Carpenter, *The Development of American Political Thought* (Princeton, 1930), 166-67: "The framers of the United States Constitution vastly improved upon the theory of Locke by regarding their instrument as a fundamental law in subordination to which the law-making body must act. Thus they were able to mark out as constitutional limitations the natural rights which Locke had been unable to define. Furthermore, through the power of judicial control they set up an intermediate defense between the legislature and the reserve power of revolution in the hands of the people."

[155] Adams, Hamilton, Madison, Washington, all revolutionaries, distrusted the feelings revolution unleashed. Hamilton put it this way: "In times of such commotion as the present, while the passions of man are worked up to an uncommon pitch, there is great danger of fatal extremes. The same state of the passion which fits the multitude, who have not a sufficient stock of reason and knowledge to guide them, for opposition to tyranny and oppression, very naturally leads them to a contempt and disregard of all authority. The due medium is hardly to be found among the more intelligent; it is almost impossible among the unthinking populace. When the minds of these are loosened from their attachment to ancient establishments and courses, they seem to grow giddy and are apt more or less to run into anarchy." To John Jay, Nov. 26, 1775. Harold Syrett (ed.), *The Papers of Alexander Hamilton* (New York, 1961), I, 176.

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sary an appeal to the people, or in other words a rebellion, on every infraction of their rights. . . ."[156]

Thanks to judicial review, "revolution" has been domesticated, brought within the four corners of the Constitution. Hamilton spelled it out in *Federalist*, No. 78.

> Though I trust the friends of the proposed constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish, the established constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions of the existing Constitution, would, on that account, be justifiable in a violation of those principles, or that the courts would be under greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it, prior to such an act.[157]

Brought into juxtaposition are three essential buttresses of freedom: Right of Revolution, Bill of Rights, Judicial Review. Oppression of individuals and minorities may encourage resort to the moral right of revolution, a right no American can gracefully query; an independent judiciary, by courageously interposing its judgment against majorities bent on infractions of the Constitution, advances the cause of peaceful change.

Professor Louis Lusky of the Columbia Law School, who as Justice Stone's law clerk helped to write the Carolene Products footnote, stresses the close connection between the discharge of judicial duty and the right of revolution. The second and third paragraphs of the footnote are "frank recognition" of the important part the Court performs "in the maintenance of the basic conditions of just legislation. By preserving the hope that bad laws can and will be changed, the Court preserves the basis for the technique of political

[156] "Notes on Virginia" in H. A. Washington (ed.), *The Writings of Thomas Jefferson* (Washington, D.C., 1853-55), VIII, 371-72.
[157] Beloff, 400.

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obligation, minimizing extra-legal opposition to government by making it unnecessary."[158]

In America "vibrations of power" (the "genius" of our system for Hamilton)[159] are institutionalized. The pendulum may swing freely, reflecting alternating moods and responses about man and society. The availability of peaceful remedies for the correction of abuses renders it unnecessary to lop off political heads with the sword of revolution.

VI

Elevated considerations such as these, deeply rooted in our heritage, apparently inspire the Warren Court's activism. Yet Justice Harlan, and perhaps Justice Black, seem convinced that the majority is headed toward the same precipice from which the Hughes Court, under pressure from Congress, the President, and the country, narrowly saved itself in 1937. But, surely, the interests and values concerned, and the Court's responsibility toward them, differ significantly. In 1935-36, a narrow, headstrong majority, flouting persistent pleas for judicial self-restraint voiced by a highly esteemed minority, blocked regulation of the economy; in the hands of an obtuse majority, the Constitution became a strait jacket, not a vehicle of life. Confessing the error of their way, the same justices,

[158] Louis Lusky, "Minority Rights and the Public Interest," *Yale Law Journal*, LII (1942), 20-21. Professor Lusky's point is amply supported by the record. In the Virginia ratifying convention, John Marshall, later Chief Justice, asked: "What is the service or purpose of a Judiciary, but to execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest, or availing yourselves of force? . . . To what quarter will you look for protection from an infringement on the Constitution, if you will not give the power to the Judiciary? There is no other body that can afford such a protection." J. Elliot (ed.), *The Debates at the Several State Conventions* (Washington, D.C., 1836), III, 503. Gouverneur Morris, in 1802, considered the Courts infinitely valuable to domestic tranquility, peace, and to individual protection against governmental oppression. "The framers of this Constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered, that since that day many of the States, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. . . . I beg gentlemen to hear and remember what I say: It is this department [the Judiciary] alone, and it is the independence of this department, which can save you from civil war." In U.S. Senate, Jan. 14, 1802, quoted in Farrand, III, 391-93.

[159] To Rufus King, June 3, 1802, in Henry Cabot Lodge (ed.), *The Works of Alexander Hamilton* (New York, 1904), X, 439.

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almost overnight, breached the Maginot line they had themselves built. The Warren Court, on the other hand, in expanding the limits of freedom, in buttressing the moral foundations of society, in keeping open constitutional alternatives to violent change, brings us closer to the ideals we have long professed.

In Supreme Court opinions, as nowhere else, it is recognized that, though freedom may be a dangerous way of life, it is ours.[160] The Constitution articulates the faith Jefferson voiced in the Declaration of Independence: government can rest securely on reason and consent, rather than on coercion and force. Governments, Jefferson wrote, "derive their just powers from the consent of the governed." The judicial mandate, "one man, one vote," echoes these sentiments. In making government more responsive to the people, the Warren Court has become a creative force unequalled since the long regime of Chief Justice Marshall.

Jefferson's bold wager of 1801, challenged as never before, is still to be fully tested. Yet certain Supreme Court justices continue to proclaim it: "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."[161] Presented is a remarkable irony—the Supreme Court, in structure and organization the most oligarchal branch of our government, in the vanguard of democracy.

The story, of course, does not end on this note, happy or otherwise, depending on one's point of view. In certain of the most crucial civil liberties cases, the justices have split five to four or six to three. Still facing the Court are issues of the greatest complexity. A living organism, its values, attitudes, and personnel change.

[160] The most eloquent recent example is from the late Justice Jackson: "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. . . . If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not occur to us." *West Virginia State Board of Education* v. *Barnette*, 638, 642. Mr. Justice Frankfurter dissented.

[161] In J. D. Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents, 1789-1908* (Washington, D.C., 1909), I, 322.

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Though the Warren Court, on the whole, seems to have achieved the golden mean Chief Justice Marshall thought he had attained, history affords no justification for believing that it will not yet go too far. Justice Harlan, among others, believes that the majority has already exceeded its authority.[162] If so, one may find comfort in the knowledge that our system provides various corrective devices for judicial usurpation. The dramatic repudiation of its own ill-founded precedents, on the heels of Franklin Roosevelt's Court-packing threat, contradicts Justice Stone's strangely unrealistic dictum that "the only check upon our own exercise of power is our own sense of self-restraint."[163] Dissenters and malcontents, now as always, alert us to Free Government's most distinctive aspect—dialogue, conflict, opposition. No opposition means no democracy, no freedom. The Supreme Court is our final arbiter only in a particular case. Its decision must remain, as Lincoln said, in a never-ending dialogue.[164] What we are dedicated to is not an absolute rule from Mount Sinai; we are dedicated to self-government, rule by the people.

[162] Protesting the new rules imposed on police officers, Justice Harlan observed: "The foray which the Court takes today brings to mind the wise and foresighted words of Mr. Justice Jackson in Douglas v. Jeannette, 319 U.S. 157. . . : 'This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added.' " *Miranda* v. *Arizona*, 753.

[163] Justice Stone's observation (dissenting in *United States* v. *Butler*, 79) is almost a match for one of the most fantastic descriptions of constitutional interpretation in the annals of the judiciary—Justice Roberts' portrayal of it as a squaring operation, laying the article of the Constitution which is invoked beside the statute which is challenged.

[164] Abraham Lincoln, Speech in Springfield, Illinois, June 26, 1857, in my *Free Government in the Making* (3rd ed.; New York, 1965), 533-37.

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The Road to 1984

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I

In an extremely hostile essay, published in 1956 on the occasion of the American printing of Orwell's early novel, *Keep the Aspidistra Flying*, the critic Anthony West said that "only the existence of a hidden wound can account for such a remorseless pessimism." The pessimism to which West referred was that of the world of *1984*, although West found that the whole body of Orwell's writings—including his first novels—was pessimistic through and through. For West, that pessimism was largely inauthentic. Orwell's despair over poverty, for example, is understood by West to be mostly "the mood of a man who feels inadequate and despised because he is not rich." Orwell's indictment of his early school years in the essay "Such, Such Were the Joys," leads West to remark that "what Orwell represents as an apparatus designed to cripple him was in actuality an attempt to give boys like him a chance to win the best possible start in life." West does not even hesitate to say that Orwell felt "cheated" by the refusal of the British to surrender to the Nazis: his morbidity could have been satisfied only by a colossal disaster. And in his chagrin, Orwell, says West, "consoled himself by constructing a fantasy of universal ruin."[1] The upshot is that the real way of coming to terms with *1984* is to assume its worthlessness except as a contribution to the psychopathology of George Orwell, as that work of Orwell's which,

[1] Anthony West, "George Orwell," reprinted in West's *Principles and Persuasions* (New York, 1957), 176, 166, 167, 171.

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more than any other, expressed the fundamental sickness of the man.

West is not the only writer to find the pessimism of *1984* excessive, not warranted by even the worst events of modern times, and to suggest that some argument *ad hominem* could alone explain the blackness of Orwell's last book. To leave aside all that may be exaggerated in the rest of Orwell's work, *1984* does seem to go too far, so far as to have earned for itself a wide reputation for implausibility. Isaac Deutscher, among others, has attributed to the book "the mysticism of cruelty." But where West obviously delights in his nastiness toward Orwell, and offers little clarification and no sympathy, Deutscher tries to account for Orwell's extremism. Deutscher thinks that Orwell's illness doubtless played some part in determining him to write such a fearful book. "But," says Deutscher, "the main explanation of the inner logic of Orwell's disillusionment and pessimism lies not in the writer's death agonies, but in the experience and the thought of the living man and in his convulsive reaction from his defeated rationalism." The point is that even on the most generous estimation of Orwell's character, the conclusion is inescapable that some serious personal shortcoming, rather than the force of historical events, produced a book like *1984*. The shortcoming is intellectual in nature: "for at heart," says Deutscher, "Orwell was a simple-minded anarchist and, in his eyes, any political movement forfeited its *raison d'être* the moment it acquired a *raison d'état*."[2] A hatred of politics came to dominate Orwell in the last years of his life; and from such hatred, an immature and unacceptable view of politics had to result. Political wisdom presupposes acceptance of historical necessities.

Now it is undeniable that one's first response to *1984* will most likely be incredulity. Above all, the motives of the Inner Party seem altogether out of the realm of likelihood. To attribute love of power to political men is commonplace; to insist that this love is almost always present among political men, and often takes malevolent forms, could hardly meet with disagreement. But Orwell does go beyond that; he goes beyond hard-headed realism, beyond cynicism, also well beyond the normal liberal dread of men in

[2] Isaac Deutscher, "'1984'—The Mysticism of Cruelty," reprinted in Deutscher's *Heretics and Renegades* (London, 1955), 46, 47.

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power. He goes beyond Tacitus, Machiavelli, Hobbes, and Nietzsche in their speculation on the degrees and kinds of pleasure men can take in wielding power. O'Brien, member of the Inner Party, and the pursuer and tormentor of Winston, instructs Winston on the psychology of the men at the top:

> The Party seeks power entirely for its own sake. We are not interested in the good of others; we are interested solely in power. Not wealth or luxury or long life or happiness; only power, pure power. . . . Power is power over human beings. . . . Unless he is suffering, how can you be sure that he is obeying your will and not his own? Power is in inflicting pain and humiliation. Power is in tearing human minds to pieces and putting them together again in new shapes of your own choosing. . . . If you want a picture of the future, imagine a boot stamping on a human face—forever.[8]

Power, in short, is sadism; and sadism is by itself sufficient to sustain the three elites of the world in their tireless activity.

It is hard not to feel that Orwell is placing too much strain on even the most dogged willingness to believe the worst about the future, or about tendencies in the present, or about the notorious features of the recent past, like Stalinism in the mid-thirties and Nazism in the early forties. The mind rebels: hatred must surely have clouded Orwell's understanding. There may be much in *1984* that is brilliant, inventive, close to reality or what is implicit in reality. But when it comes to disclosing the causes of evil behavior, is it not safe to say that Orwell is not to be trusted?

I think the answer must be yes—he is not to be trusted. Common sense must have its way, and common sense prevents acceptance of sadism as a constant and sufficient source of action on the part of millions of men, hour after hour, year after year. There is no historical experience that would bear Orwell out. The worst Nazi lived on something besides cruelty. In so far as one can deal with the question of political motivation in the abstract, one must conclude that the heart of *1984* is unsound. Winston himself cannot believe the explanation given to him by O'Brien; but the reader is supposed to see that it is the very liberalism he shares with Winston that blinds both to the truth. However, liberalism—that is, in the form of generosity in interpreting human behavior—is not

[8] George Orwell, *Nineteen Eighty-four* (New York, 1949), 266.

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needed to reject Orwell's characterization. The same hard-headed realism that leads one to expect the love of power to be operative in the world of politics, or indeed in all areas of human life from the most domestic to the most spiritual, must also keep one from picturing that love in too lurid a fashion. Furthermore, other things —other vices, at the least—drive political men to evil behavior. So has it been; so, one assumes, must it always be.

To say this is nevertheless not to hold Orwell's achievement cheap. Any political scientist must find *1984* a rich and greatly suggestive book. Nor is it to endorse the position taken by Anthony West; sly references to indefinite aberrations provide no help in looking at Orwell's writings, *1984* included. On the other hand, Deutscher does give a lead that is worth following: Orwell obviously wrote *1984* in a terrible conviction of defeat. We depart from Deutscher, however, when he charges Orwell with being a "simple-minded anarchist," a childish rationalist, a "quasi-mystical pessimist" for whom the Stalinist Great Purges proved too much to take, and who fell into "the abyss of despair" because of them. Orwell was not at all simple-minded, and the Stalinist Great Purges do not, by themselves, account for his anguish. The story of that anguish is more complicated. I should like to recount a bit of it here.

II

From his earliest political writings, like *The Road to Wigan Pier* (1937) and *Homage to Catalonia* (1938), Orwell is clear in his own mind as to the nature of his idealism. Nothing Orwell thereafter wrote indicated that this idealism had changed in the slightest way. Orwell died professing the only political faith he ever had, namely, faith in equalitarian and democratic socialism. The one thing that changed with time was the severity of his skepticism concerning the chances for realizing his kind of socialism. He was not at any time wholly free from skepticism; but in the last few years of his life that skepticism became deeper and deeper, and would seem finally to have extinguished hope altogether.

In a moving passage in *Homage to Catalonia*, a book written out of his experiences with the left-Anarchist forces during the Spanish Civil war, Orwell gave one of his best formulations of the socialist ideal. He is describing the "prevailing mental atmosphere" among the workers' militia in Aragon:

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> Many of the normal motives of civilized life—snobbishness, money grubbing, fear of the boss, etc.—had simply ceased to exist. The ordinary class-division of society had disappeared. . . . and no one owned anyone else as his master. . . . One had breathed the air of equality. . . . In that community where no one was on the make, where there was a shortage of everything but no privilege and no boot-licking, one got, perhaps, a crude forecast of what the opening stages of Socialism might be like.

Orwell distinguishes this socialism—authentic socialism, he called it—from the socialism of that "huge tribe of party-hacks and sleek little professors" who were busy proving that socialism meant nothing more than "a planned state-capitalism with the grab-motive left intact."[4] Orwell thus agrees with Malraux, who in his novel on the Spanish War, *Man's Hope*, has one character say that the opposite of humiliation is fraternity: the substance of genuine radicalism is not only the elimination of poverty, but also of all the invisible barriers between men.[5] In any case, socialism is not in any important sense the quest for abundance and a life of self-indulgence, with all the state-control and planning that that would necessitate. Orwell was always more interested in abolishing extreme suffering than in imagining total felicity. In fact, Orwell thought that it was only after the abolition of extreme suffering that the "real problems of humanity"—the moral and spiritual ones—could fully disclose themselves.[6]

The enemies of this version of socialism were numerous, starting with the state socialists in England: *The Road to Wigan Pier* states Orwell's opposition to them at length and pungently. But there were other enemies, more dangerous and more hateful. There were the old-fashioned reactionaries: capital, the military, the church; there was the fascist movement culminating in Hitler, "the criminal lunatic," as Orwell called him in an essay on H. G. Wells written in 1941; there were the Bolsheviks who, in some ways better than the Fascists and Nazis, had nevertheless destroyed revolutionary idealism in the course of consolidating their power. There was, finally, the curse of ideology: the unreasoning attachment to the

[4] *Idem, Homage to Catalonia* (Boston, 1955), 104-05.

[5] André Malraux, *Man's Hope*, translated by S. Gilbert and A. Macdonald (New York, 1938), 95, 207.

[6] George Orwell, "Looking Back on the Spanish War" (1943) in Orwell, *Collected Essays* (London, 1961), 206.

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views of one's group, whatever the group, the blind loyalty to the group at the expense of the truth, at the expense of sanity itself. As Orwell puts it in his fine essay, "Notes on Nationalism" (1945): "the habit of identifying oneself with a single nation or other unit, placing it beyond good and evil and recognizing no other duty than that of advancing its interests."[7] It is in this latter essay, I think, that Orwell's hatred of the very essence of political involvement, of the very idea of organized solidarity in behalf of some worldly purpose, of the immersion of the self in something larger than the self, is most forcefully articulated, before the writing of *1984*. In sum, there was much to fill Orwell with disgust and anxiety in the late thirties and during the war. Indeed Orwell occasionally sounded beaten. In 1938, he wrote that "the one thing that never arrives is equality."[8] In his essay of 1941, "Wells, Hitler and the World State," Orwell said that H. G. Wells was too sane to understand the modern world, and that "a crude book like [London's] *The Iron Heel*, written nearly thirty years ago, is a truer prophecy of the future than either *Brave New World* or [Wells' own] *The Shape of Things to Come*."[9] And in an essay published in 1943, called "Looking Back on the Spanish War," Orwell suggested that it was perhaps not childish or morbid to "terrify oneself with visions of a totalitarian future:" fascism or "a combination of several Fascisms" could conceivably conquer the world.[10]

But for all the variety of terror and failure in the world of politics, Orwell did not give up. He retained a large degree of poise, even hopefulness in the period of 1936 to 1946. He continued to make distinctions between the different kinds of political evil: some were less terrible than other kinds; and, furthermore, some good things were within reach and should therefore be fought for. While the future could turn into an unrelieved nightmare, it need not. In a number of writings Orwell provided a corrective to his own despair and skepticism.

For example, he was ready as late as 1944 to claim that though

[7] *Idem*, "Notes on Nationalism," in *Collected Essays*, 265.
[8] Quoted in John Atkins, *George Orwell* (London, 1954), 13.
[9] Orwell, *Collected Essays*, 166.
[10] *Ibid.*, 198. Toward the end of his long essay, "Inside the Whale" (1940), Orwell prophesies the death of liberal culture. "Almost certainly we are moving into an age of totalitarian dictatorships . . ." (*Collected Essays*, 157).

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"all revolutions are failures . . . they are not all the same failure." These words come from his quite acute essay on Arthur Koestler, in which Orwell tried to quarrel with Koestler's retreat from political life and with Koestler's oscillation between complete despondency about doing anything politically constructive in the present, on the one hand, and a desperate faith that sometime in the distant future the world will be Paradise because it would be intolerable to think otherwise, on the other. Orwell was interested in maintaining some middle ground, which consisted in valuing political activity without having any illusions concerning utopian success. What is more, he takes issue with Koestler's *The Gladiators* (1939), a novel dealing with Spartacus and the slave rebellion in Rome. Orwell seems unable to accept Koestler's view that when revolutions fail, the failure is to be attributed to the incompetence or petty selfishness of the masses. To the extent that *The Gladiators* is an attack on the ordinary lowly fellow (and I think Orwell exaggerates Koestler's tendencies in that direction), it is morally questionable and historically inaccurate. The struggle for power among the leaders, not the "hedonism" of the masses, wrecks revolution. Orwell says, "If Spartacus is the prototype of the modern revolutionary—and obviously he is intended as that—he should have gone astray because of the impossibility of combining power with righteousness." Orwell finds Koestler's *Darkness at Noon* (1941) to be a much sounder treatment of the perils of the revolutionary process. Orwell seems to endorse the principle that "revolution. . . is a corrupting process. . . . It is not merely that 'power corrupts': so also do the ways of attaining power."[11] Despite the force of that principle, however, Orwell does not come out and say that under no circumstances should force be used to achieve social ends. Orwell's general critique of pacifism, which is carried on in several of his writings, seems to include a rejection of pacifism when it is used to undermine revolutionary exertion.

I would say that Orwell's fable, *Animal Farm* (1945), is his answer to Koestler's *The Gladiators* as much as it is a reworking of the themes of *Darkness at Noon*. From beginning to end, a love for the humble beasts informs the book; they work with incredible ardor, they hold on to a sense of dignity which taking part in the over-

[11] *Idem*, "Arthur Koestler" in *Collected Essays*, 232, 225, 228.

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throw of the old order had first given them. They are, of course, victimized almost immediately after their initial success—victimized by their Pig leadership; and they are finally defeated: the revolutionary leadership turns into an oligarchy, the old oppression is conducted by new men, there has been little more than a circulation of elites. No doubt *Animal Farm* can be taken as a book preaching that "all revolutions are failures." The point is, nevertheless, that we must be clear as to what causes the failure; and we must acknowledge that on the way to failure a few excellent things can happen. That is, for a while, the masses may experience exhilaration and may attain to a fleeting self-respect founded on equality, though an equality of toil and scarcity. The residual feeling left by the book is not despair.

Another example of Orwell's composure at this time is his celebrated essay on Jonathan Swift, "Politics vs. Literature" (1946). The subject of this essay really is how an esthetic outlook on life can turn one sour and then reactionary. Orwell loved Swift, especially *Gulliver's Travels*, but, though loving him, took him for a great enemy of human progress. What Orwell wished to do in this essay, above all, was to champion the idea of social happiness against Swift's terrible *amertume*. We have already noticed that Orwell's idealism was not utopian: it held out no possibility that one day society could be perfect, that all the ills of man could be eradicated and that all the activities of men could be pleasurable. By "happiness" Orwell did not mean much more than the elimination of the worst sorts of avoidable suffering, the suffering brought about by want, class-feeling, and stultifying labor. Life could acquire *decency:* as Isaac Rosenfeld and others have said, that is probably the best word to describe Orwell's ideal.[12] And he found in Swift a venomous indictment of all mankind that would paralyze the effort to reconstruct society: how can you work to make men happy, or at least happier than they now are, unless you do not hate them? Orwell never said that the man of generous politics had to *love* humanity: that was for saints, that was perfectionism, and Orwell was, one could say, programmatically against perfection

[12] Isaac Rosenfeld, "Reflections on Orwell," reprinted in Rosenfeld, *An Age of Enormity*, edited by T. Solotaroff (New York, 1962), 246-57.

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and sainthood.[13] But Swift's hatred was corrosive; it had to be fought. Orwell did not scruple to psychologize at Swift's expense:

> The aim, as usual, is to humiliate Man by reminding him that he is weak and ridiculous, and above all that he stinks, and the ultimate motive, probably, is a kind of envy, the envy of the ghost for the living, of the man who knows he cannot be happy for the others who—so he fears—may be a little happier than himself. The political expression of such an outlook must be either reactionary or nihilistic, because the person who holds it will want to prevent society from developing in some direction in which his pessimism may be cheated.

Orwell thought the source of Swift's disgust was sexual impotence. (How remarkably similar is Orwell's portrait of Swift to West's portrait of Orwell.) The worst accusation that Orwell can make against Swift is that his rendering of life on earth as hell is too partial: pessimism is not adequate to all the facts. Orwell says: "Swift falsifies his picture of the world by refusing to see anything in human life except dirt, folly, and wickedness. . . . Human behavior, . . . especially in politics, is as he describes it, although it contains other more important factors which he refuses to admit."[14] Those are the factors that make for decency. They are precarious; their success is hardly assured; their failure would certainly be assured if all good men thought—especially if all good men felt—as Swift did.

The last example of Orwell's qualified optimism that I wish to refer to is another essay, published in 1946, called "Second Thoughts on James Burnham." This piece is important primarily because Orwell, in the course of discussing two of Burnham's books—*The Managerial Revolution* (1941) and *The Machiavellians* (1943)—attributes to Burnham a conception of politics which Orwell rejects, but which turns out to be, in an intensified form, the intellectual basis of *1984*, published three years later, in 1949.

Orwell finds that Burnham's theories are reducible to two propositions: (1) politics is essentially the same in all ages and (2) political behavior is different from other kinds of behavior. Though Orwell's handling of these propositions is not always clear, there

[13] See Orwell's "Reflections on Gandhi" and "Lear, Tolstoy and the Fool," both reprinted in *The Orwell Reader* (New York, n.d.), 328-35 and 300-15, respectively.

[14] *Idem, Collected Essays*, 394, 396-97.

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is no doubt that he finds them much too pessimistic and also lacking in historical sense. He cannot accept the idea that love of power explains the fact that human societies have been hierarchical down through the ages, with not only power, but also wealth and general well-being unequally distributed. Up to the present, scarcity would have dictated inequality, apart from the satisfaction inequality gives to men driven by the love of power. By making so much of the love of power as an ineradicable trait in human nature, Burnham forecloses the possibility of a genuine socialism. But, for Orwell, the great obstacle to socialism is not human nature as such; he seems to say that power-hunger is not a natural instinct like the desire for food, which "does not have to be explained." Orwell writes: "The question that [Burnham] ought to ask, and never does ask, is: why does the lust for naked power become a major human motive exactly *now*, when the dominion of man over man is ceasing to be necessary?"[15] He is prepared with the sketch of an answer: the "middling people"—the scientists, technicians, teachers, journalists, broadcasters, bureaucrats, professional politicians—want "a system which eliminates the upper class, keeps the working class in its place, and hands unlimited power to people very similar to themselves." These are the people, hungry for ever more power and prestige, who block the way to equalitarian socialism, who will try to prevent machine technology from making good its promise to rid the world of poverty and drudgery, and hence of the material preconditions of hierarchical rule. The implication is that though the love of power has always existed, it is only now that its consequences are of such magnitude. Furthermore, Orwell is certain that where love of power has dominated, as in the case of Nazi Germany and Bolshevik Russia, the political system is inherently unstable and doomed to extinction. If Orwell in 1940 and later could entertain the speculation that fascism might triumph on a worldwide scale, he is convinced, in 1946, that "slavery is no longer a stable basis for human society." The crimes of the Nazi leadership were also their follies; their suppression of freedom and decency had to lead to disaster, while "the Russian regime will either democratize itself, or it will perish."

[15] *Ibid.*, 373. The relation between Orwell and Burnham is discussed in Michael Maddison, "*1984*: A Burnhamite Fantasy?" *Political Quarterly*, XXXII (1961), 71-79.

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Orwell is thus willing to believe that some men are in love with power; but he does not believe that they are now in control, or that the future could possibly be theirs. In contrast to Burnham, he refuses the temptation to generalize about political phenomena, and to generalize about them in a way most calculated to remove liberal and humane aspirations from the range of possibility forever. Orwell localizes his pessimism, as it were, even though he has often shown distaste for the behavior of political men. To be sure, the managerial stratum is troubling; but, says Orwell, "there is no strong reason for thinking that [Burnham's theory of the managerial revolution] tells us anything about the future, except perhaps the immediate future."[16]

III

The question of questions, then, is, What happened to change Orwell's mind about Burnham's thesis? Why is it that writing in 1946, Orwell thought that the future would not be bad, as Burnham defined badness, but that in 1949, he could publish a novel in which the future is not only bad, but much worse than anything Burnham imagined. Burnham is content to explore considerations such as these: men of power look on policy as a means to get or hold power, rather than on power as a means to implement policy; men want power for psychological gratification rather than to promote substantive interests; the best metaphor for a political organization is a gang rather than an agency; and those in power look upon the governed as things to be used rather than as men to served. Why is it that Orwell decided to enlarge on Burnham's thesis to the point of picturing the future as absolute evil? We have already noted that Orwell's health was poor; then, too, his wife died in 1945. Orwell was sick and gloomy; in 1947 he retired to a small farm on a distant, lonely island in the Hebrides, and cut himself off from society.[17] Personal facts obviously predisposed him toward looking at public facts with bitterness. But who can be satisfied with explaining *1984 simply* as the quite natural production of a distressed man? All that brilliance, all that ingenuity, all that power of rendering the

[16] *Ibid.*, 373-74. Also, see Orwell's essay, "Raffles and Miss Blandish" (1944), in *Collected Essays*. In this essay, Orwell raises the question of the relation between sadism, masochism, and power-worship (pp. 244-45).

[17] T. R. Fyvel, "George Orwell and Eric Blair," *Encounter*, XIII (1959), 60-65.

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intolerable must have come out of something political as well as something personal.

A clue to Orwell's thinking at what must be the time of brooding about, and preparing to write, *1984*—that is, the middle of 1947—is found in a short article he published in *Partisan Review* in 1947, called "Toward European Unity." In that piece Orwell lists three possibilities for the future: (1) a preventive war waged by the United States while it alone possessed atomic weapons; (2) the acquisition by the U.S.S.R. and other countries of atomic weapons, followed by atomic war, and the reduction of social life to a primitive level; and (3) a frozen *status quo*, brought about by the fear of using atomic weapons, in which the world will be divided into two or three superstates, each one of which will be a rigid hierarchical society "with a semidivine caste at the top and outright slavery at the bottom."[18] Orwell thought that the third possibility was by far the worst, and the one most likely. Only the spectacle of a democratic socialist society the size of a united Western Europe could work to avoid the coming of the totalitarian superstates. There were, however, titanic forces that would oppose the creation of such a socialist society: the hostility of the Soviet Union to a union of European nations not under its control and standing for values inimical to it; the hostility of the United States, as a capitalist country, to socialism; the remaining attachment to imperialism, even on the part of the working classes; and the hostility of the Catholic Church, the inveterate foe of freedom of thought, human equality, and the attempt to promote earthly happiness by social reform. The future may turn out all right: things could change in Russia in a liberal direction, America could go socialist when capitalism fails, as it surely must; even in a world of superstates, the liberal tradition could survive in the Anglo-American sector. It was hard to say; but "the actual outlook, so far as I can calculate the probabilities, is very dark. . . ." To these speculations, we must add that Orwell felt that the Labor government had not taken any significant steps to-

[18] George Orwell, "Toward European Unity," *Partisan Review*, XIV (1947), 347. It should be noted that the superstates of 1984 come into being "after a decade of national wars, civil wars, revolutions and counterrevolutions in all parts of the world . . ." (*Nineteen Eighty-four*, 206). Mention should also be made of the similarity between the way in which the proles are treated in *1984* and the way in which Hitler planned to treat the Slavs after Nazi victory. See Alan Bullock, *Hitler: A Study in Tyranny* (rev. ed.; New York, 1964), 693-703.

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ward real socialism; a few democratic reforms had been made, but they amounted to very little. The English Left had missed the opportunity afforded, first, by the war, and, second, by the accession of the Labor party to power, to alter English life.

So that between the time of the essay on Burnham (1946) and of the article just described (the middle of 1947), Orwell had abandoned the view that the future was against the world-wide ascendancy of the managerial stratum. Disappointment with the Attlee government had combined with dismay at the beginnings of the cold war to weaken Orwell's socialist expectations for the future nearly to the point of extinction. That Orwell read the events of the postwar world with little skill; that his understanding of American capitalism was minimal; that his dislike of the American character prejudiced his predictions concerning the future—these things, I think, cannot be denied. The main point is that with justice or not Orwell was sincerely persuaded, two years after the end of the war, that though fascism had been defeated, the potentiality for totalitarianism had not. America and Russia preserved that potentiality, and some decent alternative to both of them seemed implausible.

It must be said, however, that much as the Orwell of "Toward European Unity" differs from the Orwell of "Second Thoughts on James Burnham," one could not be prepared by "Toward European Unity" for *1984*. Orwell's novel goes beyond any pessimism contained in that short article, beyond any pessimism found elsewhere in Orwell's writings, and beyond—far beyond—the pessimism found in Burnham's writings, as well. The political situation accounts for much of the somber tone of "Toward European Unity," but it had not become so bad that *1984* can be seen as a reflection, though distorted, of it. On the other hand, all of Orwell's personal troubles taken together do not add up to *1984*; personal troubles never add up to a work of genius. What then is to be said about the genesis of this book? A possible answer is that Orwell consciously decided to become Jonathan Swift, only a Swift whose vision of horror would energize men rather than enervate them, a radical rather than a reactionary Swift.

IV

In his essay on Swift—to which we have already referred—Orwell concludes by explaining why he loved so deeply such a terri-

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bly reactionary writer. Orwell acknowledges that Swift was a thoroughgoing simplifier, a man who seized on one aspect of human life—its cruelty, dirt, and deformity—and wrote as if that aspect were the whole of life. Despite his one-sidedness, people respond to Swift; we all have moods which can be satisfied only by the most savage assaults on the life we live. Orwell says: "Swift did not possess ordinary wisdom, but he did possess a terrible intensity of vision, capable of picking out a single hidden truth and then magnifying it and distorting it."[19] The same description could be more or less made of Orwell's last book. (It would be a nice romanticism to believe that Orwell, a sick man, knew that *1984* would be his last book, and that he intended it as his testament.) We could say that Orwell deliberately sacrificed ordinary wisdom in order to achieve an intensity of vision. And he desired to achieve an intensity of vision, in order to rouse men to danger. What he did was to imagine a world in which everything he hated had coalesced and become omnipotent. The superstates of *1984* combine the overt features and implicit tendencies of Bolshevism, Capitalism, Imperialism, Nazism, and Roman Catholicism, plus a few resemblances to the ancient slave societies, Platonic utopianism, and the dynastic politics of early modern Europe. Also included are references to the characteristics of all organizational life. Some features are copied fairly faithfully; some are exaggerated, or "magnified," to use Orwell's word about Swift. The system as a whole is endowed with a coherence that no system in the real world has ever had. Orwell asked himself the sociological question, What are the institutions required for a group of men in the modern world to wield absolute power? and the answer comes out in every detail, major and minor, of *1984*. In that respect, the book is a *tour de force*, one of the most successful acts of political imagination ever made. Reading it, one is thereafter made sensitive to any happening in the world that resembles, even slightly, something in *1984*; one is also equipped to examine dictatorships and oligarchies, past and present, with a heightened understanding. One's perception of even normal politics is altered. *1984* is a splendid work in defense of freedom and of equality. By predicting the future it may help to defeat its predictions; for that tactic to work,

[19] Orwell, "Politics vs. Literature," 398.

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exaggeration is probably necessary. An image of pure evil must be presented, in order to sicken the decent man and make him more passionate in his attachment to the kinds of political good he still may be fortunate enough to enjoy.

The only question is whether the psychological foundations of *1984* detract from the book's hortatory value. We return to the motivation of the Inner Party: Can sadism sustain millions of men for a lifetime, generation after generation? When Burnham talked about the motivation of the managers, he did attribute to them a love of power; but that love is not made out to look like sadism: the love of control and initiative is not rendered as the love of inflicting pain. Besides, Burnham assumed that the managers want other satisfactions than those given by power. Orwell is, therefore, no student of Burnham, when he describes the mind of O'Brien. Granted that Orwell distorts for the sake of effect, is O'Brien's motivation, in fact, a distortion of some main characteristic of the political systems he hated? Studies in the psychology of despotic and totalitarian leadership are not far advanced, but there would seem to be little in them to match Orwell's analysis. The most stimulating works on this subject—Rauschning's *The Revolution of Nihilism*, Trevor-Roper's *The Last Days of Hitler*, Hannah Arendt's *The Origins of Totalitarianism* and *Eichmann in Jerusalem*, and Robert C. Tucker's essay on totalitarianism[20]—suggest that sadism is not by any means the sole ingredient, nor even a very important one. Fanaticism, adventurism, deep psychic impairment, cynicism, activism, nihilism, mindless loyalty—all these considerations figure; pure sadism, hardly at all. At the most elementary level, a distinction can be made between those who destroy in order to control, and those who control in order to destroy. If Orwell thought he was distorting rather than inventing, other writers would not back him up. Suppose, however, that it *is* invention, a departure on Orwell's part from recorded experience, in or-

[20] Robert C. Tucker, "The Dictator and Totalitarianism," *World Politics*, XVII (1965), 555-83. It must be said that there are numerous and remarkable similarities between Orwell's book and Hannah Arendt's analysis in *The Origins of Totalitarianism* (New York, 1951). But there is one major difference. Miss Arendt says, "The aggressiveness of totalitarianism springs not from lust for power, and if it feverishly seeks to expand, it does so neither for expansion's sake nor for profit, but only for ideological reasons: to make the world consistent, to prove that its respective supersense has been right" (p. 432).

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der to suggest the formation of a new kind of character, a kind that can emerge only when reality is prepared for it.[21] Orwell may be saying that there can be millions of O'Briens only when the material conditions needed for motivation like O'Brien's are on hand, when it is open to some men to control the behavior of other men absolutely. The opportunity will create the men—there is already enough evil in managers as we know them to assure us of that. Again, it is too much to ask us to believe that even in some future time, when conditions are yet more propitious for malevolence, a ruling class can live on hatred, can live without some other source of energy, some lie or self-deception, some trace of (perverted) humanity. Surely Orwell understood that. Furthermore, Orwell himself has not really answered the question he put to Burnham, the question he puts in Winston's mouth; he does not fully explain why men want power. All he does is to say that men want power in order to control men, and that control is best understood as the capacity to inflict pain, to make men suffer, and to change their behavior by means of suffering. He does not explain why some men want to make other men suffer. He does not even extend the line of inquiry suggested by, say, Harold Lasswell in *Power and Personality*. Lasswell writes, "Our key hypothesis about the power seeker is that he pursues power as a means of compensation against deprivation. *Power is expected to overcome low estimates of the self*, by changing either the traits of the self or the environment in which it functions."[22] Love of prestige draws men to power; concern for prestige profoundly influences the way men use power.

The best Orwell can do is to suggest that wielding power as a member of a collectivity is a flight from the private, fragile, mortal self. In his essay of 1943, "Looking Back on the Spanish War," Orwell said that "the major problem of our time is the decay of the belief in personal immortality. . . ." And in "Notes on Nationalism," he said that, in his extended sense of the word, the worst traits of nationalism "have been made possible by the breakdown

[21] Irving Howe says, in his excellent essay, that "it is extremely important to note that the world of 1984 is *not* totalitarianism as we know it, but totalitarianism after its world triumph. Strictly speaking, the society of Oceania might be called post-totalitarian." "Orwell: History as Nightmare," in Howe, *Politics and the Novel* (New York, 1957), 250. See also Philip Rieff, "George Orwell and the Post-Liberal Imagination," *The Kenyon Review*, XVI (1954), 49-70.

[22] Harold Lasswell, *Power and Personality* (New York, 1962), 39.

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of patriotism and religious belief."[23] O'Brien develops this theme in the lessons he inflicts on his victim, Winston. O'Brien says,

> We are the priests of power. . . . God is power. . . . The first thing you must realize is that power is collective. The individual only has power in so far as he ceases to be an individual. You know the Party slogan: "Freedom is Slavery." Has it ever occurred to you that it is reversible? Slavery is freedom. Alone—free—the human being is always defeated. It must be so, because every human being is doomed to die, which is the greatest of all failures. But if he can make complete, utter submission, if he can escape from his identity, if he can merge himself in the Party so that he *is* the Party, then he is all-powerful and immortal.[24]

But with these words the most Orwell has done is to suggest some of the favorable psychological conditions for single-minded adherence to a cause or to an institution. There is, however, no easy leap from a wish to lose oneself and to forget that one must die, to total inhumanity. Orwell implies that there is. For that reason, his explanation is lamentably incomplete; it remains fatally implausible. Orwell has failed to account for political cruelty; he has failed to show that cruelty is the secret of power.

What then can one say? The truth of the matter may be only that Orwell thought that the imputation of sadism would be the best way to induce a fierce hatred on the part of the reader. Orwell's terrible vision of the coming power elite thus probably derives from an artistic and political calculation. That it is, in my opinion, a miscalculation should not diminish one's reverence for the book. Orwell had no hidden wound, as Anthony West would say; he had no simple mind, as Isaac Deutscher would say. His libertarian fervor carried him away; but that, for the most part, is to our unbelievable advantage.

[23] Orwell, *Collected Essays*, 206, 286.
[24] Orwell, *Nineteen Eight-four*, 267.

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James F. Byrnes: Unwitting Yalta Myth-Maker

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The Yalta Conference of February 4-11, 1945, has become a symbol for the critics[1] of the Roosevelt administration's Soviet policy. These critics have pointed to the Conference as confirming the worthlessness of Soviet promises and therefore the senselessness of attempting to reach a *détente* through negotiations. They have also asserted that the perfidious and sinister nature of Soviet objectives should have been obvious to any sensible statesman. In addition, they have inaccurately depicted the Conference as President Roosevelt's personal, secretive action. Lastly, they have denounced the Conference's agreements as harmful and unnecessary, as having contributed to, or resulted in, the communization of Eastern Europe and China and the emergence of the Soviet Union as a major world power.

Significantly, these appraisals of Yalta ignore the limitations on and the possibilities open to U.S. policy as of February 1945. They distort the nature of the Conference and the expectations of the conferees. This failure, even unwillingness, to examine the Yalta Conference as a diplomatic conference seeking to delineate areas of

[1] A partial list of these critics includes: Robert Taft, William Langer, Karl Mundt, Richard Nixon, William Knowland, Styles Bridges, Everett Dirksen, John Bricker, William Jenner, Walter Judd, Joseph McCarthy, Kenneth Wherry, Pat McCarran, John Rankin, Arthur Watkins, Herbert Hoover, Clare Boothe Luce, Homer Ferguson, Homer Capehart, the Chicago *Tribune*, *Time*, and *U.S. News and World Report*.

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agreement is reflective of post-1949 American foreign policy debates. In these debates, the assumptions of the containment policy have been uncritically accepted. Cold war policies have been rigidly adhered to without assessing their applicability to or reasonableness for a particular situation.

The factors contributing to this impasse in the formulation and discussion of postwar American foreign policy must be understood. Nonpartisanship was not the norm during postwar foreign policy debates. The "bipartisan" foreign policy, while silencing proponents of a *détente* with the Soviet Union, enabled "anti-Communists" to assail containment and Roosevelt's *détente* policy as appeasement. They could also charge that these policies, because defensive and conciliatory, insured Soviet success.

Foreign policy became a major partisan issue after 1949. Indeed, in the 1949-53 congressional debates and in the 1952 presidential campaign, the Republican congressional leadership and the Republican presidential candidates Robert A. Taft and Dwight D. Eisenhower concentrated principally on Roosevelt-Truman foreign policy decisions. This debate did not center on feasible alternatives but on those past decisions which became controversial because of postwar developments. Negative and obstructive, the intent of this debate was narrowly political. The Yalta Conference was the focus of these denunciations.

I

Yalta's controversial decisions made it a symbol. The decisions on Eastern Europe, particularly on the Curzon line, alienated many American ethnic groups. The originally undisclosed agreements on the Great Power veto and the provision granting the U.S.S.R. three votes in the General Assembly created an image of secret diplomacy. The disclosure of the Far Eastern agreements in February 1946 heightened this reaction. Indeed, after 1949, critics of Roosevelt's Soviet policy focused on the Far Eastern agreements, blaming them for Chiang's defeat and for the Korean war. Secretary of State Byrnes' January 1946 assertion that he did not know of the Far Eastern agreements, or even where the text was located, provided further impetus for this assault on the Roosevelt administration's Far Eastern policy. His statement was, therefore, *an* important factor in the evolution of the Yalta mythology.

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Byrnes had attended the Yalta Conference as an adviser to President Roosevelt. From July 3, 1945, to January 21, 1947, he had served as Secretary of State under President Truman. No minor functionary, Byrnes seemingly had been directly involved in administration China policy, as Secretary of State and as delegate to the Yalta Conference. What was crucial was not that Byrnes had not participated in the Yalta discussions and decisions on the Far East. This could be understood, since his attendance at Yalta was not as a foreign policy, but political, consultant to the President. (Roosevelt sought to prevent the repetition of Wilson's 1919 experience. Byrnes was his liaison with the Congress.) What was most critical, or became so, was Byrnes' suggestion in January 1946 that he had not learned of the Far Eastern agreements when he became Secretary of State. This helped create the myth that the Yalta agreements were secretly concluded by Roosevelt unbeknownst even to his close advisers.

Byrnes' alleged "ignorance" of the Yalta Far Eastern agreements was periodically invoked by administration critics to raise doubts about Roosevelt's policies and the Yalta decisions. Thus, the Chicago *Tribune* portrayed Byrnes' alleged ignorance as confirming Roosevelt's abuse of the powers of the presidency. It lamented that "vital" U.S. interests were entrusted to "this man" [Roosevelt].[2] In its assessment of the 1951 MacArthur hearings, *Time* magazine emphasized past administration foreign policy secrecy, noting that even Secretary of State Byrnes had been unaware of all the Yalta concessions.[3] And *U.S. News and World Report*, reporting the Eisenhower administration's decision to postpone publication of the Yalta papers until after the 1954 congressional elections, emphasized the Conference's secrecy. It thus alluded to Byrnes' pre-January 1946 ignorance of all the Yalta agreements.[4] A July 28, 1950, speech by Republican Senator William Langer took the same approach. Langer noted:

> So, Mr. President, because there were at the Democratic Convention a lot of weak men who wanted to win, who wanted to get a few more votes by nominating Roosevelt for President for a third *[sic]* time,

[2] Chicago *Tribune*, July 27, 1949.
[3] *Time*, June 25, 1951, p. 20.
[4] *U.S. News and World Report*, Nov. 19, 1954, p. 5.

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> they were willing to take this man and sell out the country. That is why a sick man went to Yalta, a man who in the absence of the Secretary of State [an incorrect reference to Byrnes' absence from the last session, since Stettinius was then Secretary of State] and without even his knowledge, gave away the countries and advantages which I have already named [Far East]. That is why we today have our boys fighting in Korea—and why our beloved country is facing ruin and destruction.[5]

Byrnes' alleged ignorance provided excellent campaign material for administration foreign policy critics and also adversely affected the formulation of foreign policy by undermining public trust in the President's honesty. But were Byrnes' January 1946 statements correct? Were the Yalta Far Eastern agreements that secret? Secretary of State since July 1945, did Byrnes know about these agreements prior to January 1946? And if he knew of the agreements prior to January 1946, when did he learn of them and why did he not release them earlier or admit his responsibility for the belated February 1946 release?

II

Critical examination of the events from February 1945 through February 1946 illustrates the real basis for Byrnes' January 1946 statement—not his prior ignorance but a political desire to shift responsibility for the Far Eastern agreements solely to Roosevelt, so that Byrnes could preserve good relations with, and the trust of, the Congress. Byrnes' December 1945 testimony during the Hurley hearings was the background for this January 1946 position.

The Far Eastern agreements were not disclosed in the February 11, 1945, communique. And, in his March 1, 1945, report to the joint session of Congress, President Roosevelt specifically denied that the Far East was even discussed at Yalta. These omissions or denials, if untrue, were based on military considerations. The war against Germany had not been won and the Three Powers intended to keep the agreement secret from Japan.

In February 1945 Byrnes did not know the specifics of the Yalta Far Eastern agreements. He had not participated in any of the Yalta meetings when the Far East was discussed. Since the formal Far

[5] U.S., *Congressional Record*, 81st Congress, 2nd Session, 1950, XCVI, Part 8, p. 11326.

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Eastern agreement was drafted only on February 11, 1945, Byrnes obviously could not have known the specifics of the Far Eastern agreements (having left Yalta at 3:00 P.M., February 10). Byrnes probably knew that the Far East was discussed at Yalta, since Soviet involvement in the Japanese war had been a major U.S. policy objective.[6]

The Yalta Far Eastern agreements, however, were not secret, personal Roosevelt agreements. Prior to the Conference, the State and War Departments had drafted memoranda on U.S. policies and objectives. Representatives of both departments attended the Conference, participated in the formulation and discussion of policy decisions, and were aware of the final terms, both those publicized in the February 11, 1945, communique and those initially kept secret.[7]

Indeed, the Far Eastern agreements were central to U.S. Far Eastern policy in 1945. Following the German surrender on May 8, 1945, the Far East, and hence these agreements, assumed even greater significance. The Yalta Far Eastern agreements, however, were not unquestionably accepted. The Truman administration had reassessed the U.S. commitment to the terms of the agreements. Doubts about Soviet aims in the Far East had arisen; the desirability of Soviet military involvement in the Far Eastern war came under review.

In a May 12, 1945, memorandum to Secretary of War Henry Stimson, Secretary of State Edward Stettinius reviewed the State Department's views on future Far Eastern policy. Stettinius reported the State Department's uneasiness over the Yalta Far Eastern agreements. He asserted that the State Department sought more specific Soviet assurances of compliance before supporting adherence to the Yalta concessions. Stettinius specifically asked Stimson whether the War Department supported reconsideration or fulfillment, in whole or in part, of the Yalta Far Eastern agreements.[8]

[6] For Byrnes' role at the Yalta Conference, see U.S. Department of State, *Foreign Relations of the United States, Diplomatic Papers: The Conferences at Malta and Yalta 1945* (Washington, D.C., U.S. Gov't. Printing Office, 1955), 540, 546, 553-57, 589, 609, 611-33, 659-71, 708-26, 771-91, 797, 799, 824, 834, 841-57, 860-61, 962.

[7] *Ibid.*, 351-400, 454-55, 501-02, 562-67, 569, 593-94, 650-54, 698, 757-60, 763-71, 826-31, 834-41, 894-97, 920-21, 925, 949-50, 952-53, 961.

[8] Memorandum of Secretary of State Stettinius for the Secretary of War, May 12, 1945. Stettinius Collection, University of Virginia Library.

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In addition to reassessing U.S. policy toward Soviet involvement in the Japanese war, the Truman administration was concerned over future Sino-Soviet relations. At Yalta, the Roosevelt administration had accepted certain Soviet demands—lease rights to Port Arthur and Dairen, joint Sino-Soviet operation of the Chinese Eastern Manchurian railroad, preservation of the *status quo* in Outer Mongolia—in return for Soviet commitments to intervene in the Japanese war and to conclude a Sino-Soviet "pact of friendship and alliance." The Roosevelt administration had sought to limit both Soviet territorial gains and involvement in Chinese internal politics, and also to insure Sino-Soviet friendship. It assumed responsibility for informing Chiang Kai-shek of the Yalta terms and for promoting Sino-Soviet discussions and Chiang's acceptance of the terms. In the July-August 1945 Sino-Soviet discussions pursuant to these Yalta agreements, the Truman administration played an important, if indirect, role. The formal treaty, basically embodying the Yalta terms, was officially announced on August 14, 1945. The Truman-Byrnes administration was fully informed of these Sino-Soviet discussions and agreements.

When James Byrnes became Secretary of State on July 3, 1945, he was immediately involved in these ongoing Sino-Soviet discussions. By then, the Truman administration was not committed to Soviet involvement in the Japanese war. Instead, the administration sought to prolong the negotiations, hoping to end the war with Japan prior to Soviet intervention. It urged the Chinese Nationalists to avoid making specific commitments, relying thus on Soviet hesitation to intercede prior to the delineation of formal terms of an agreement. Unwilling to renounce the Far Eastern agreements, the administration, instead, sought to play a waiting game.[9]

Byrnes was not only involved in these July-August tactics, but as early as July 4, 1945, was aware that agreements concerning China had been concluded at Yalta. On that date, in response to President Truman's instructions, he sent a telegram to W. Averell Harriman (U.S. Ambassador to the Soviet Union) stating that the United States would not offer its interpretation of the Yalta terms concerning China. On July 6, Byrnes informed Harriman that the

[9] For an intensive review of this changed U.S. foreign policy position after April 1945, see Gar Alperovitz, *Atomic Diplomacy: Hiroshima and Potsdam* (New York, 1965).

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United States, as a signatory of the Yalta terms, expected to be consulted before any Sino-Soviet agreement was reached.[10] By his own later admission, Byrnes read the full text of the Yalta Far Eastern agreements in August 1945, after returning from Potsdam.[11]

Limited by the Yalta understandings on the Far East, in August 1945, the Truman administration was unwilling to force an open break with the Soviet Union. Thus, it neither formally renounced nor released for publication the Yalta Far Eastern agreements, as would have been correct and appropriate on August 14, 1945, with the formal announcement of Japanese surrender.

The Truman-Byrnes administration, however, was immediately faced with a Soviet demand for the cession of South Sakhalin and the Kurile Islands as Yalta had provided. Originally occupied by U.S. troops, the Kurile Islands were turned over to the Soviet Union in late August 1945. This move caused a storm among conservative Republicans. Indeed, on August 28, 1945, Congressman Paul Shafer (Republican, Michigan) demanded an investigation over whether the Kurile Islands had been ceded to the Soviet Union because of a prior secret agreement. Simultaneously, Shafer emphasized the islands' strategic importance for U.S. security.[12]

During a September 4, 1945, press conference, Secretary of State Byrnes disclosed the basis for Soviet occupation as resulting from discussions at Yalta, *not* Potsdam. He informed the press that he "remembered well" the Yalta "discussions" concerning the Kuriles and South Sakhalin. At the same time, he denied that a final agreement had been reached, claiming that this was the responsibility of the future peace conference. Byrnes confirmed both the Soviet right to these territories and his own intention to discuss the matter with Soviet Foreign Minister Molotov at the forthcoming London Foreign Ministers' Conference. Cagey and evasive in his remarks, Byrnes left the impression that additional understandings of far greater importance, particularly concerning China, had been reached at Yalta. The New York *Herald Tribune* correspondent attributed the "sudden and unexpected" Soviet renunciation of the Chinese Communists (by recognizing the Chinese Nationalist gov-

[10] Harry S. Truman, *Memoirs: Year of Decision*, Vol. I (Garden City, N.Y., 1955), 315-19.
[11] Chicago *Tribune*, Jan. 30, 1946.
[12] Chicago *Tribune*, Aug. 29, 1945.

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ernment) to certain Yalta concessions embodied in the Sino-Soviet treaty of August 1945.[13]

Byrnes' September disclosure elicited minimal comment in the press or in the Congress. Neither *Time* nor *Newsweek* even reported his statement. *U.S. News* mentioned it in a one-paragraph report on its last page section on brief notes from Washington.[14] The fact that the Far East had been discussed at Yalta aroused only minor protests (although the Chicago *Tribune* condemned, and the New York *Times* defended, this agreement on military security grounds[15]). Byrnes' September knowledge was conveniently ignored.

Byrnes' evasive statement on Yalta in September 1945, in view of his July-August awareness of the U.S. Yalta position and the Truman administration's changed tactics during the Sino-Soviet discussions, has especial significance. Byrnes' reservations were not due to ignorance or haziness because he had not attended the February 11, 1945, Yalta session. His cryptic comments reflected a political decision to avoid a formal commitment to implement the Yalta terms. It was significant that, unlike past secret Yalta agreements such as the Security Council veto or the provision giving the Soviet Union three votes in the General Assembly, the administration did not use this occasion to release the formal text of the Yalta Far Eastern agreements.

By failing to publish the Far Eastern agreements on August 14 or September 4, 1945, the Truman-Byrnes administration created a potentially embarrassing, and controversial, political problem. When formally published later, the agreements' military and political justification would have had to be established. In addition, the delay in publication would have had to be explained. Military security justified non-publication prior to the Soviet entry into the Japanese war on August 8, 1945, but not after. Political necessity justified non-publication prior to the announcement of the Sino-Soviet treaty on August 14, 1945, but not after. For Byrnes, the conservative Republicans' bogey of Rooseveltian intrigue provided

[13] New York *Herald Tribune*, Sept. 5, 1945. See also Chicago *Tribune*, Sept. 5, 1945; New York *Times*, Sept. 5, 1945.

[14] *U.S. News*, Sept. 14, 1945, p. 104.

[15] Chicago *Tribune*, Sept. 6, 1945; New York *Times*, Sept. 9, 1945.

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a convenient cover for his own political decision not to publish the agreements.

III

As one might have expected, non-publication of the Yalta Far Eastern agreements soon proved to be a liability for the Truman-Byrnes administration. The administration's Far Eastern policy came under searching review during the controversy centering on Patrick Hurley's dramatic resignation as U.S. Ambassador to China in November 1945. Hurley's allegations of subversive influence in the State Department created a political storm in Washington. Special hearings were held in early December 1945 to investigate his charges. Hurley did not then criticize administration Far Eastern policy. He defended it as correct, and moreover praised the Sino-Soviet treaty. His suggestion of subversive influence was based on the differing judgments and recommendations of junior foreign service officers and consular officials, and particularly on their efforts to overrule his recommendations.

During the Hurley hearings, Senator Styles Bridges (Republican, New Hampshire) questioned Hurley whether any agreement concerning China had been reached at Yalta. Stressing that he had not personally attended the Conference, Hurley stated that he was not the best source on the Yalta agreements. Hurley admitted knowing what had happened regarding China, but deemed the Secretary of State [Byrnes] a better authority.[16]

On the next day of the hearings, Bridges pressed Secretary of State Byrnes whether the Big Three, without Chiang's consent, had reached an agreement at Yalta concerning China. (Bridges apparently had learned that an agreement had been reached at Yalta, since he asked only about Yalta and not Potsdam or Teheran. It is conceivable that Hurley had briefed him on the agreement or that he had learned of it through a leak from the State Department.) Byrnes attempted to evade Bridges' question. Feigning ignorance, Byrnes suggested that Bridges refer to the Yalta communique. He further asked what Bridges had in mind. Byrnes, however, never stated that no agreement on China had been concluded. Bridges, seeking a

[16] U. S. Congress, Senate Committee on Foreign Relations, *Hearings on Investigation of Far Eastern Policy*, 79th Congress, 1st Session, 1945, pp. 123-24.

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categorical answer, asked again whether a specific agreement was reached. He finally contended that if Byrnes did not want to answer "that is all right." Byrnes replied that

> I do not recall the various agreements [of the Yalta conference]. It is entirely possible that some of the agreements arrived at Yalta affected China in some way or another, and I have told you that I would gladly furnish you the communique and then you could decide whether or not they affected China. If they were made they certainly were made by the heads of government and certainly only the three Governments were represented there.[17]

Byrnes' non-admission did not faze Bridges. He observed that, had any agreement on China been concluded, in view of such an agreement's importance Byrnes could not have been unaware of its existence.[18]

By refusing to answer Bridges' questions, Byrnes left himself open to the charge that he was not speaking frankly to the Senate. Bridges aptly assessed the importance of the Yalta Far Eastern agreements and the improbability that Byrnes, as Secretary of State, could remain ignorant of their terms. Byrnes' evasiveness during the Hurley hearings would later politically compromise him. Consistency necessitated that he continue to feign ignorance.

One month later, in January 1946, developments in the Pacific again focused attention on Soviet occupation of the Kuriles. The administration had proposed handing over to an international trusteeship the islands captured from the Japanese during World War II. The U.S. military, particularly, opposed this decision on strategic grounds.

During his January 22, 1946, press conference, Acting Secretary of State Dean Acheson was questioned about the basis for this policy and specifically whether the Soviet Union would turn over the Kuriles to an international trusteeship. In reply, Acheson asserted that Soviet control of the Kuriles had been agreed to at Yalta. The Yalta Kuriles agreement, Acheson noted, permitted Soviet military occupation, but was not a permanent cession. The islands' final disposition, Acheson admitted, might mean that the Soviet Union would retain full control.[19]

[17] *Ibid.*, 231-33.
[18] *Ibid.*, 231-32.
[19] Chicago *Tribune*, Jan. 23, 1946.

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Acheson's assessment of the Yalta Kuriles agreement was immediately challenged by the Soviet Union. On January 26, 1946, Moscow radio asserted that Yalta provided for the cession of the Kuriles and South Sakhalin to the Soviet Union, following Japan's defeat. It denied that the nature of the agreement was temporary, a military operation related to the war.[20]

In his January 29, 1946, press conference, Byrnes cleared up this disparity. He admitted that the Kuriles and South Sakhalin had been ceded to the Soviet Union at Yalta and, further, that other agreements had been concluded at Yalta concerning Port Arthur and Dairen. He added that these agreements would not be binding until ratified by a peace treaty with Japan.

Far more important, and one basis for the development of the Yalta mythology, were Byrnes' allegations about the Yalta Conference. Noting that he had not attended the February 11 sessions of the Conference, Byrnes asserted that he did not learn of these agreements until August 1945, a few days after the Japanese surrender. In reply to a series of questions, Byrnes expressed ignorance over whether his predecessor as Secretary of State, Edward Stettinius, knew of the agreements and over the location of the formal text of the Yalta agreements. He specifically denied that the text was in the State Department archives. He admitted that it might be in the White House files.[21]

IV

Private, personal agreements of Roosevelt, secretly arrived at! Secretary of State Byrnes' assertions confirmed this view. By alleging ignorance of the agreements and even of the text's location, Byrnes effectively shifted congressional attention from the Truman-Byrnes administration to Roosevelt. He thus exonerated his actions during the Hurley hearings and in failing to release the agreements earlier. Moreover, by appealing to the anti-Roosevelt prejudices of the administration's most vocal foreign policy critics, Byrnes was able to preserve his relations with Congress and the press creating the impression that the reason the agreements had not been released

[20] *Ibid.*, Jan. 27, 1946; *Newsweek*, Feb. 4, 1946, p. 46.

[21] Chicago *Tribune*, Jan. 30, 1946; *U.S. Department of State Bulletin*, XIV, No. 345 (Feb. 10, 1946), 189-90.

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earlier was that Roosevelt alone had concluded them and had thereupon hid the text. If good ward politics, Byrnes' action adversely influenced public confidence in executive direction of foreign policy.

To preserve his reputation and relations with Congress, Byrnes dissembled in January 1946. (His memory would suffer drastically with the passing years. By 1958, Byrnes would assert that he learned of the Far Eastern agreements only on February 10, 1946.[22]) Briefed on administration Far Eastern policy when he assumed responsibility as Secretary of State in July 1945, Byrnes not only informed Harriman of the administration stance on the meaning of the Yalta terms in July, but admitted reading the full text of the agreements in August 1945. Because he had read the text in August, he could definitely have stated in January 1946 that the text of the agreements was located in the White House files and had been there all along except when reviewed by the State or War Departments. Byrnes also could have confirmed Stettinius' knowledge of the agreements. The May 12, 1945, memorandum and other State-War discussions on the Far Eastern situation, and specifically the Sino-Soviet treaty, attest to that.

However, this admission would have required an explanation of the administration's failure to release the text of the agreements on August 14, 1945, with the formal pronouncements of the Japanese surrender and the Sino-Soviet treaty. Moreover, such an admission in January would have conflicted directly with his December 1945 testimony during the Hurley hearings. In December 1945 Byrnes knew of the Yalta Far Eastern agreements but deliberately feigned ignorance. One month after his testimony at the Hurley hearings, the confusion over the Kurile Islands' disposition posed Byrnes' real political dilemma—admit his responsibility or shift the blame to Roosevelt. His response was automatic and calculated. If unintended, his January 1946 remarks helped confirm the allegations of the Yalta myth-makers.

[22] James Byrnes, *All in One Lifetime* (New York, 1958), 266, 268.

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Ethnic Fragmentation and Politics: The Case of Surinam*

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The example of Surinam, with its highly distinctive Creole, Hindustani, and Javanese components, suggests that ethnic pluralism, rather than destroying societal integration, may under some circumstances lead to the establishment of a political consensus based upon the fragmentation of the ethnic segments produced in the process of competition for political clientele as well as on mutual fears of group domination.

I

With the recession of Western imperial control, the growth of political sensitivity resulting from the cold war, and increasing awareness of the social concomitants of economic development, attention recently has been drawn to the acute problems of political and social integration encountered in many of the ex-colonial areas, the borders of which were drawn with relatively little consideration to often highly variegated ethnic content. The example of the implacable demands and the convulsive consequences of na-

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tionalist sentiment in nineteenth- and twentieth-century Europe suggests the precariousness of any political structure that includes ethnically distinctive units, and the inescapable consciousness of ethnic identity together with the instant applicability of coercive control made possible by modern technology, serve to render doubtful the prospects for the attainment of any substantial degree of value integration within the so-called "plural societies." Nevertheless, reflection suggests that ethnicity furnishes only one among many available bases for social identification, and that while to be sure the existence of distinctive ethnic units within a society poses special problems, at the same time the difficulties of a society's integration are by no means to be regarded as necessarily varying with the degree of distinctiveness of its component units. As Braithwaite has said:

> The problem of the plural society is indeed a problem of social structure posed by the existence of marked differences in culture, but a society or social system cannot be defined in cultural terms by merely observing the presence or absence of cultural traits; it must be done in terms of social action, that is, the interaction of social roles.[1]

Selection of the social characteristics that are regarded as relevant to a given type of interaction of course varies highly from encounter to encounter within a given culture, and may indeed rest on such arbitrary bases as to require the adoption of explicit group symbols in order to bring about recognition—as in the case of a sports team; while at the same time highly visible differences, such as those between the tall and the short, or the blue- or brown-eyed, may be so minimized as to remain only a category of the statistician rather than a basis for social action. The concept of ethnicity has arisen to cover those cases in which various ascribed characteristics are used to distinguish those of an allegedly distinctive provenance. The content of the differences in question may range from the completely nominal—literally, in that the name-type is the only differentia—to cases in which phenotypical, linguistic, religious, and other distinguishing characteristics are superimposed upon one another in such a way as to make identification inescapable.

[1] Lloyd Braithwaite, "Social Stratification and Cultural Pluralism," *Annals of the New York Academy of Sciences*, LXXXIII (1960), 823.

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To the degree that distinctive phenotypical appearance provides such inescapable social identification, it is likely that stereotypical expectations of behavior will come to be applied and thereby in fact reinforce distinctive behavior for all those so identified. The involuntary give-away of language and accent also serves as a focal point for social identification, being almost equally inescapable for the individual, though of course subject to obliteration in the course of generations. Other symbols of social status may on occasion be equally salient, but are either more subject to manipulation—the case of clothes, for example; or may locate the individual in terms of a separate dimension of social classification, which does not necessarily parallel the ethnic classification—for example, the case of sexual status or, a more variable case, class identification that involves "status incongruence." Examination of an instance in which nearly all the criteria for social identification are highly visible and are also superimposed may provide, then, something of a test-case for the viability of the plural society.

Such a case is to be found to a startling degree in Surinam, where—aside from the impingement of the Dutch—the local population is composed of three major strains, not to mention other categories not part of the society proper (the Bush-Negroes and the indigenous Indians). According to the latest figures available,[2] some 39.3 per cent of the total civil population of 292,205 falls in the social category defined as "Creole," which in this case has come to designate those known to have some degree of Negro ancestry;[3] some 38.5 per cent are "Hindustani," the product of the immigration of indentured laborers from India which was brought to a close in 1917; and some 16.5 per cent are "Indonesian" or "Javanese," the product of a similar immigration that was halted only by the outbreak of World War II.[4] In terms of its social characteristics, each of these groups is instantly identifiable and largely distinctive. The variability in phenotypical appearance among the Creoles serves in itself to distinguish them

[2] Provisional data for the census of March 31, 1964, from the Algemeen Bureau voor de Statistiek, Surinam, as of December 29, 1964.

[3] Rudolf A. M. van Lier, *Samenleving in een Grensgebied* (The Hague, 1949), 3, note.

[4] The balance of 5.6 per cent—largely Chinese and, to a lesser extent, Syrian-Lebanese—is heavily concentrated in Paramaribo. See note 2.

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from the others.[5] In language their native tongue is either the indigenous "Sranang-tongo"[6] or Dutch;[7] if admitting to church membership, either Catholic or Moravian Brotherhood; in clothes, generally nondescript Western. They dominate the capital city, which in turn dominates the country; and where found in the countryside are highly concentrated.[8] Occupationally, they are over-represented in white-collar, professional, and urban blue-collar classifications; they are, however, significantly under-represented in retail and entrepreneurial functions.[9]

Equally distinctive are the Hindustani, not only in appearance and to some extent in dress, but in language—speaking variations of Hindu and Urdu;[10] in religion—despite years of proselytization, only five per cent of the Hindustani have become nominal Christians;[11] to a large degree in location and occupation—over-

[5] To some extent the term "Creole" may be regarded as a residual category. While no statistics exist on the subject, it is estimated that about thirty per cent of the Creole population is of mixed ancestry. Interview with H. C. van Renselaar, Oct. 17, 1963.

[6] A recent euphemism for "taki-taki" or "Negro-English," the *lingua franca* established during the first seventeen years of plantation agriculture with African slaves under the British, 1650-67. According to M. A. Karamat Ali, the very name of Surinam derives from "Surreyham": "De Evolutie van de Hindostanse Volksgroep in het Kader van de Surinaamse Samenleving" in Surinaamse Jongeren Vereniging "Manan," *Van Brits-Indisch Emigrant tot Burger van Suriname* (The Hague, [1963]).

[7] A somewhat simplified form known as bonko-bonko is spoken among the unlettered; see W. Gs. Hellinga, *Language Problems in Surinam: Dutch as the Language of the Schools* (Amsterdam, 1955).

[8] The Creoles constitute sixty-one per cent (or 67,544) of the population (110,093) of Paramaribo; the city makes up thirty-eight per cent of the civil population (292,205) of the country. (It is estimated that there are about twenty-seven thousand Bush-Negroes and four thousand Indians not included in the above totals.) See note 2.

[9] D. B. W. M. van Dusseldorp, "Geografische mobiliteit en de Entwikkeling van Suriname," *Bijdragen tot de Taal-, Land- en Volkenkunde*, CXIX (1963), 41, citing *Rapport Adviesraad voor de Herziening van het Tienjarenplan*, 7-9.

[10] J. D. Speckmann, "Hidustanse Bevolkingsgroep in Suriname," *Oost en West*, LV (1962), 22-25, and C.J.M. de Klerk, *De Immigratie der Hindustanen in Suriname* (Amsterdam, 1953), Chap. 3, give an idea of the variations in verbal and written expression; for the linguistic adjustment in Surinam, see I. C. van Houte, "Het Bilinguïsme van de Hindostaanse Kinderen in Suriname" in *Van Brits-Indisch Emigrant tot Burger van Suriname*, 90-98.

[11] Albert S. Mitrasingh, "Die Stellung der Inder in der Gesellschaftsstruktur Surinams unter besonderer Berücksichtigung der Landwirtschaft," mimeographed doctoral dissertation (University of Bonn, 1961).

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whelmingly small-holders in the countryside, although by now a significant number have undertaken entrepreneurial functions, both in small-scale manufacture and in commerce, and have entered into urban life.[12] In contrast stand the Javanese, characteristically to be found in settlements working public land, although a few have entered into lowly occupations in large enterprises. Their Moslem identification serves to distinguish them from all but a minority of the Hindustani (who are led to emphasize their own distinctiveness in view of this common bond); and their native tongue likewise encapsulates them within the larger society.[13]

II

To demonstrate the salience and inescapability of social identification is to say nothing about the nature of the interrelationships among the groups so defined. Culturally enjoined attitudes are to be understood as a product of the historical experience of interrelationship, in which the perception of one social group by another must be referred to assessment in terms of contrasting cultural values and the opportunities for the displacement of affect as well as the situational role that the groups have played vis-à-vis one another. In Surinam a common background phenomenon entering into both the situation and the scale of judgment has been Dutch rule up until 1954; this situation made it possible in the first place for the various sections of the society to avoid full confrontation and to define their relationship in terms of common alienation from the imperial authority; secondly, however, to the degree that Dutch culture became a role-model for the constituent groups, it was clear that the more assimilated (largely mulatto) members of the Creole segment stood out clearly as superior. However, the universal applicability of this standard was cast into considerable doubt by the implied recognition of the adequacy of Asiatic cul-

[12] R. M. N. Panday, "De Sociaal-Economische Betekenis van de Hindustaanse Bevolkingsgroep in Suriname" in *Van Brits-Indisch Emigrant tot Burger van Suriname*, 39-48.

[13] For the Javanese, see Joseph Ismael, *De Immigratie van Indonesiërs in Suriname* (Leyden, 1949) and "De Indonesische Bevolkingsgroep in Suriname," mimeographed (Amsterdam, Stichting voor de Culturele Samenwerking [1950]); Justus M. van der Kroef, "The Indonesian Minority in Surinam," *American Sociological Review*, XVI (1951), 672-79; and Anne Marie de Waal Malefijt, *The Javanese of Surinam: Segment of a Plural Society* (The Hague, 1963).

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tures under the Kielstra administration of the thirties during which was not only the infeasibility of assimiliation by implication recognized by the "Asiatic marriage law"[14] but also plans were undertaken to provide for the large-scale immigration of Javanese colonists who were to maintain their separate culture on traditional "dessa-communities" supported by the government.[15]

Despite the fact that, owing to the War, these plans were never carried into effect, the appropriateness of the Dutch role-model has since been thrown into doubt not only by the image-shattering events of the War and the subsequent withdrawal of Dutch imperial control but also by the emergence in both the occupational and political spheres of the hitherto largely scorned, typically Negro elements of the Creole population.[16] In the event, their political thrust has been largely absorbed in the highly rewarding if prosaic matter of the assertion of Creole political paramountcy, with the novelty, however, that the former mulatto establishment has been to a significant extent dismantled.[17] A potentially more explosive movement asserting the worthiness of the "folk-culture" of the Creole masses—notably celebrating the autochthonous language and marriage ceremonies and the vestigial African religion —has had relatively little success, despite its understandable appeal to those who find it more pleasant to regard themselves as first-class Creoles rather than as second-class Dutchmen.[18] But it

[14] J. D. Speckmann, *Marriage and Kinship among the Indians in Surinam* (Assen [1965]), 121-24; see also J. Prins, "Een Surinaams Rechtsgeding over een Moslimse Verstoting," *Nieuwe West-Indische Gids*, XLII (1963), 201-07.

[15] Ismael's mimeographed study contains the best analysis of this development; M. de Vries is now working on a comparative study of agricultural practices among the three major groups in Surinam, and can be expected to provide a more detailed analysis of the abortive effort at dessa-settlement.

[16] *Postwar political developments, emphasizing the emergence of political* autonomy, are best traced in F. E. M. Mitrasing, *Tien Jaar Suriname: Van Afhankelijkheid tot Gelijkgerechtigdheid 1945-1955* (Leyden, 1959); a useful beginning of the analysis of the emergent political system is to be found in the paper by E. J. Tjoe-ny, "Politiek en Landaard in Suriname," June 1959 (on deposit in STICUSA—Netherlands Foundation for Cultural Cooperation with Surinam and the Netherlands Antilles, in Amsterdam).

[17] There has been no study, so far as I can determine, of the adroit and very successful political leadership of the Nationale Partij Suriname by which the present Minister-President, Johan A. Pengel, has maintained his ascendancy over this movement.

[18] It can be suggested that to a significant degree this movement has had its inception in the reactions of Creole university students who have become aware

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has been difficult to convince the Asiatic groups in the population of the superior prestige of the indigenous Creole characteristics, while all groups shared a common, if grudging, respect for the universalistically available achievement values of the occupational system of the industrial order, in terms of which the Creoles had had substantial, if not exclusive, advantages. Of late, however, the Creole population has felt threatened by growing competition for occupational position on the part of the Hindustani, who have shown themselves skillful not only in carving out new independent businesses but who also have invaded the Creole preserve of white-collar positions. Adding to the tension have been the political implications of the relative increase in the Hindustani population, which is expected to provide an absolute majority within a decade.[19] Under these circumstances the primary integrative problem in Surinam has come to be the relationship between the Hindustani and the Creole communities, each of which fears domination by the other. The tension is well illustrated in recent studies which demonstrate that both groups have strong negative stereotypes of each other, the pique of the Creoles vis-à-vis the Hindustani reaching near unanimity.[20]

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of their non-Dutch identity during their years in the Netherlands. See, for instance, A. E. Bayer, *Surinaamse Arbeiders in Nederland* (Assen, 1965). To the surprise of practically everyone, the political expression of this movement, the Partij van de Nationalistische Republiek, did not succeed in capturing even a single seat by proportional representation in the elections of 1963, despite the formidable appeal of its slogan calling for full "independence NOW."

[19] Calculating the returns from *Tweede Algemeene Volkstelling Suriname 1950* (n.p., 1954-56), X, 6, as against the unofficial returns cited in note 2 above, we find that the respective rates of increase in population over the fourteen-year period are: Creoles, fifty-three per cent, Hindustani, seventy-seven per cent, and Javanese, thirty-five per cent; the first two groups are currently all but equal in absolute figures. It is of highest interest with regard to questions of both political predominance and of socio-cultural identification to note that the Bush-Negro population of some twenty-five thousand stands as a potential reserve for the Creoles; and with the shift in comparative standing together with the introduction of electric power production and bauxite mining in the hinterland, moves in the direction of the incorporation of the Bush-Negroes in the national life can be expected.

[20] See the complementary articles of J. D. Speckmann, "De Houding van de Hindostaanse Bevolkingsgroep in Suriname ten Opzichte van de Creolen" and of H. C. van Renselaar, "De Houding van de Creoolse Bevolkingsgroep in Suriname ten Opzichte van de andere Bevolkingsgroepen" in *Bijdragen tot de Taal-, Land- en Volkenkunde*, CXIX (1963), 76-92, and 93-105, respectively.

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III

Up to the present time, however, the expression of these tensions in the political arena has not resulted in the polarization of group tensions but, on the contrary, has acted to dissipate and set at cross-purposes the antagonisms that are evident in other contexts. It can be argued that some elements entering into this situation are, strictly speaking, fortuitous, such as the evident horrible example presented by the disorder in neighboring Guyana, in which Creole and Hindustani elements find themselves in similar juxtaposition. The inexperience and credulity of the electorate have also served to mitigate tensions, for they have permitted personal leadership to play an outstanding role, overshadowing other focuses of political interest.[21] But perhaps still more important are certain indigenous structural characteristics of the political system, by which political leaders have been led to engage in a process of fissure of ethnic groups. The very paramountcy of ethnic identification in fact has led to the construction of a mosaic pattern of alliances, in terms of which competing groups within the society find themselves splintered into a variety of contending factions. Just because the potential clientele of political leaders in Surinam is limited by ethnic boundaries, the competition for leadership tends to focus on other issues. Within each group there are preordained lines of fissure, the most obvious being the split within the Creole community on the basis of the usually reinforcing criteria of skin color, class position, and Dutch versus nativistic orientation. Within the Asiatic groups, perhaps just because of the greater superficial homogeneity, fractionalization has been equally evident, the great division among Javanese centering on the reformist-fundamentalist issue of the appropriate geographical orientation for prayers to Mecca, while among the Hindustani, in addition to the Moslem segmentation, a major split among those practicing Hinduism is found between liberals and orthodox, compounding a background diversity of linguistic and caste differentiation.[22]

[21] The alliance between the dominant Creole and Hindustani factions on which the postwar political system has largely rested has been the expression of understandings between the respective political leaders. But under other circumstances personal loyalties could work just as well to destroy the precarious consensus achieved.

[22] J. D. Speckmann, *Marriage and Kinship* contains the fullest discussion of

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If such fissures furnish a possible basis for fragmentation, the structure of the Surinamese political system has furthered the process. At least up until the adoption in 1963 of a modified system of proportional representation on top of the established district system, the dynamics of the electoral system have worked to induce the politician to make alliances outside his ethnic constituency, sometimes in order to get elected within mixed districts, always in the national government in order to form an administration. And if, thereby, Creole-Hindustani competition is always at stake in the political process, by the same token the edge of the contention is blunted by the fact that intra-ethnic competition inevitably has the effect of favoring inter-ethnic coalitions, principled resistance against which is destroyed by the consideration that in any case such alliances would have to take place for the construction of a majority government.

The end-result of the play of ethnic identification in the Surinamese political system has been, then, to shatter such blocs in such a way as to create a mosaic in which ethnicity colors all the fragments, which can, however, be arranged in an indefinite plurality of patterns. To some extent the very salience of ethnicity has served to render ethnic politics a dangerous game; and the probably well founded fear of ethnic domination has served to make the vestigial Dutch presence tolerable or even welcome as a third party. It remains to be seen if the ingenious and ingenuous system so established can be maintained and perhaps thereby be transmuted into the construction of a political consensus.

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the role of caste among the Hindustani in Surinam—which role he views as of limited significance. The standard study of the practice of Hinduism is C. J. M. de Klerk's *Cultus en Ritueel van het Orthodoxe Hindoeïsme in Suriname* (Amsterdam, 1951).

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Thomas M. Cooley and the Interstate Commerce Commission: Continuity and Change in the Doctrine of Equal Rights

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> There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and as heaven does its rain, shower its favours alike on the high and the low, the rich and the poor, it would be an unqualified blessing. . . .
>
> *Andrew Jackson, 1832*

Thomas M. Cooley, a man whose 1887 appointment to the Interstate Commerce Commission gave dignity and distinction to the inception of federal regulatory action, has been misunderstood by commentators to the neglect of important themes in nineteenth-century American history. Misjudged as a single-minded advocate of the judicial protection of property rights, Cooley, in reality, was a complicated individual who approached the administrative task of implementing the Interstate Commerce Act with values and beliefs which had their source in the Jacksonian persuasion of the first three decades of his life.[1] The democratic attitudes

[1] For the general historical judgment of Cooley, see especially the references to him in Benjamin Twiss, *Lawyers and the Constitution: How Laissez-Faire Came to the Supreme Court* (Princeton, 1942); Clyde Jacobs, *Law-Writers and*

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of his youth were tempered but not replaced by new commitments to the traditions of the common law, and both common law and Jacksonian assumptions were in accord on the central importance of the doctrine of "equal rights." By 1887 Cooley had anxiously observed American social and economic change—especially the growth of railroads—with preconceptions drawn from this ambiguous doctrine; from the eighteen-forties to the eighteen-nineties and particularly in his four years on the Interstate Commerce Commission he wrestled with the varying implications of the doctrine—implications dealing with the danger of corporate power, with the balance of public interest and private rights, with the relationship of property rights to the police power of the state, and with the respective roles in these matters of courts, legislatures, and administrative agencies. A narrative analysis of his essentially democratic attitudes on these questions does Cooley historical justice and offers insights into some critical issues of American history.

I

Born near Attica, New York, in 1824, Cooley was brought up in a politically active family that gave a "Jeffersonian bias" to his early political ideas.[2] Growing to maturity in the afterglow of the Age of Jackson, he participated in the "Young Americanism" of the eighteen-forties, a movement partly inspired by the "equal rights" persuasions of the radical Democratic editor, William Leggett.[3] Cooley went west to Michigan in 1843, and for the next ten years merged literary, political, journalistic, and legal interests in a career that was not marked by rapid professional success. Known as a

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the Courts: The Influence of Thomas M. Cooley, Christopher G. Tiedeman, and John F. Dillon upon American Constitutional Law (Berkeley, 1954); also see Marver Bernstein, *Regulating Business by Independent Commission* (Princeton, 1956).

[2] Deborah Cooley Pratt to Henry Wade Rogers, Aug. 3, 1901, Thomas M. Cooley Papers, University of Michigan Historical Collections, Ann Arbor (cited hereafter as Cooley Papers); James O. Putnam to Cooley, June 1, 1871, Cooley Papers.

[3] On Leggett, see Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford, 1957), 141-56; Cooley's ideas show Leggett's influence, and he had a copy of the rare 1840 edition of *The Political Writings of William Leggett* in his library.

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"Progressive Democrat" in southeastern Michigan, he helped organize the Free Soil party in that area in 1848, and he wrote poems and editorials in praise of most of the reform causes of the mid-century.[4] An advocate of free soil, free schools, free trade, and free discussion, he opposed war, slavery, monopolies, and special corporate privileges. He maintained a Jacksonian resentment of "class legislation" which he understood as legislation on behalf of already privileged classes. He combined political and literary enthusiasms in a plea for a poetry for the people which would be "directed to the ennobling of labor, and the releasing of it from the vassalage of wealth."[5] One can conclude that at mid-century his belief in equal rights was broadly democratic.

In the eighteen-fifties Cooley concentrated more narrowly on the law; appointed to compile the statutes of Michigan in 1857, named reporter to the Michigan Supreme Court in 1858, and one of the first three professors at the law department of the University in 1859, he gained success in the law—success crowned by his election to the Supreme Court of Michigan in 1864 and by the publication of his famous *Treatise on Constitutional Limitations* in 1868.[6] Growing older, gaining success, and reading history and law, Cooley grew more conservative without repudiating the democratic reform hopes of his youth.[7] An address he gave in Ann Arbor in 1863 illustrates a balance of common law historicism and older democratic values, a balance which enabled him to honor both the common law's "peculiar glory" of allowing "no precedents against a just

[4] See the entry in Cooley's Diary on September 27, 1882, Cooley Papers; for his editorials, see the issues of the Adrian *Watchtower* between November 1852 and May 1853, a period of his editorship; for his poems, see the following: "Revolutions," *Western Literary Messenger*, XV (1851), 8; "Room and Bread for All," *ibid.*, XVI (1851), 246; the manuscript poem "To William Seward" in the William Seward Papers at the University of Rochester. See the reference to Cooley as "Progressive Democrat" in the Coldwater (Michigan) *Sentinel*, Nov. 18, 1852.

[5] See his address on "The Next Half-Century" as reported in the Adrian *Michigan Expositor*, April 8, 1851, and in the Tecumseh (Michigan) *Herald*, March 13, 1851.

[6] *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* (1st ed.; Boston, 1868); cited hereafter as *Constitutional Limitations*.

[7] On the historical presuppositions of Cooley's approach to law, see especially the draft of his letter to Francis N. Thorpe, Oct. 5, 1889, Cooley Papers.

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liberty" and its "peculiar excellence" of being "forever adapted to the people."[8]

In 1863 Cooley still saw both equality and liberty as harmonizing democratic values; he could continue to subsume them under the banner of "equal rights," although his sense of rights was becoming more legalistic and his mood more nostalgically conservative. He greeted the end of the Civil War with the hope that "it is settled that this government is of and for the people with no privileged classes," but the years that immediately followed filled him with dismay when he observed the ascendant power of corporate wealth.[9] He lectured in Ann Arbor on the "political charlatans" of the present, and he deplored the "financial tricks of Wall Street" and the "illegitimate," "unjust," and "corrupt" class legislation of special grant and subsidy to railroads.[10] Such aid to private corporations was not in the public interest, and Cooley emphasized his life-long objection to the rule of the Dartmouth College case and used Jacksonian rhetoric to attack the threat of new and powerful railroad corporations: "The source of danger is in a few men having so much moneyed power. They can make great consolidations. Their monopolies are a third source of power. They are able to exercise more influence over the state legislatures than both political parties."[11]

This type of rhetoric informed a number of anti-railroad and anti-corporate decisions Cooley gave on the Michigan Supreme Court between 1869 and 1871, particularly his controversial ruling in *People* v. *Salem* with its denunciation of public tax aid to private railroads.[12] His decisions on the Michigan court identified him with reform movements in state politics, and at various times in the early eighteen-seventies reform groups offered him nominations for governor, senator, and representative.[13]

[8] *Address on the Dedication of the Law Lecture Hall* (Ann Arbor, 1863), 6, 13.

[9] See the report of Cooley's July 4, 1865, address in the Ann Arbor *Michigan Argus*, July 14, 1865.

[10] See the reports of speeches by Cooley in the *Michigan Argus*, July 9, 1869, and in the University of Michigan magazine, *The Chronicle*, Nov. 3, 1870; also the student notebook of H. B. Swartz, II, 243 (in the University of Michigan Historical Collections) for notes on Cooley's special lecture on "Corporations" in March 1870.

[11] Notebook of H. B. Swartz, II, 243.

[12] *People* v. *Salem*, 20 Mich. 487 (1870); also see his opinions in *East Saginaw Manufacturing Co.* v. *the City of East Saginaw*, 19 Mich. 274 (1869), and *Gale* v. *Kalamazoo*, 23 Mich. 354 (1871).

[13] See the letters from O. B. Clark to Cooley on August 4, 1872, from C.

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These years provide the context for Cooley's 1868 treatise. When he wrote it, his old antipathy to special privileges for corporate property interests was a dominant feature of his thought. It is ironical that historians should consider the treatise a legal apology for vested property rights, a defense of laissez-faire capitalism.[14] It is instead a classic commentary of Jacksonian constitutional thought leavened by Cooley's commitment to the traditions of the common law. Democratic presuppositions are especially apparent in his defense of a broad police power, in his insistence on judicial self-restraint, in his chapters on freedom of religion and freedom of the press, in his defense of local self-government, and in his argument that the power of taxation and the power of eminent domain be exerted for public and not private purposes. Equal rights ideas informed this last argument as they did his discussion of liberty in a section on "Unequal and Partial Legislation" at the end of the book. His understanding of liberty was democratic, and in so far as it had economic overtones, Cooley recognized these as important aspects of the "pursuit of happiness."[15] He saw property rights as deserving of protection by the "due process of law" clause of state constitutions, and he believed that arbitrary deprivation of these rights ran counter to the law of the land. He did not think this was an original view. Neither democratic nor common law tradition sanctioned the arbitrary deprivation of property rights, and the treatise reflects no desire to make the judiciary a special guardian of these rights. Cooley emphasized in 1868 (as he repeated in decisions on the court) that judges "cannot run a race of opinions upon points of right, reason, and expediency with the law-making power."[16]

Justin on September 6, 1872, and from Austin Blair, December 18, 1874, all in the Cooley Papers.

[14] The following statement from Benjamin Twiss (p. 18) is strong, but reflects the general view: "1868 marks a turning point in American constitutional law. In that year laissez-faire capitalism was supplied with a legal ideology in Thomas M. Cooley's *Constitutional Limitations* almost as a direct counter to the appearance a year earlier of Karl Marx's *Das Kapital*."

[15] *Constitutional Limitations*, 393; see his definitions of the meaning of the word liberty as used in the Fourteenth Amendment in his edition of Joseph Story, *Commentaries on the Constitution of the United States*, 2 Vols., (Boston, 1873), 669: "The word . . . embraces all our liberties, personal, civil, and political."

[16] *Constitutional Limitations*, 168. And see his opinions in *Flint and Fentonville Plank Road Co.* v. *Woodhull*, 25 Mich. 99 (1873), *Benjamin* v. *Manistee*

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Of special significance for his later experience on the Interstate Commerce Commission was his refusal in his treatise or in his court decisions to equate due process with judicial process; administrative processes of various sorts had ancient authority and precedent to support them.[17]

Cooley's book gave him a national reputation, one that was maintained by later legal writings, by decisions on the Michigan court, and by a good deal of commentary on current political, social, and economic questions. This latter writing displayed a continued opposition to the course of the Gilded Age and reflected a disenchantment with the Republican party that led him to break his ties to it and to dismiss it as "having little reason for existence."[18] A Midwestern Mugwump, Cooley was unhappy with his time; he mixed Jacksonian assumption and a Burkean sense of "inheritance" when he said that the exploitation of the public domain and national resources by private speculators and projectors was a blind sacrifice "of the future to the supposed good of the present."[19] And nostalgia was present when he looked at such new cities as Chicago and asked:

> Is this concentration of business and activity and rush; of pleasure and passion and crime; of arrogant wealth and crushing poverty and devilish hate; of social extremes wide apart as the poles and yet brought into immediate and hourly contact, is this of the same family with the staid and sombre New England town. . . .[20]

Deploring "arrogant wealth" secured by the few through special grant and exclusive franchise, Cooley foresaw the danger of dema-

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River Improvement Co., 42 Mich. 629 (1880), *Conrad* v. *Smith*, 32 Mich. 437 (1875), *State of Michigan* v. *Iron Cliffs Co.*, 54 Mich. 350 (1884), and especially *Weimar* v. *Bunbury*, 30 Mich. 203 (1874).

[17] "There is nothing in these words, however, that necessarily implies that due process of law must be judicial process," *Weimar* v. *Bunbury*, 211.

[18] See the entry in his Diary on February 10, 1886. For his comment on the issues of the day, see the following articles, in addition to those cited below: "The Legal Aspects of the Louisiana Case," *Southern Law Review*, New Series, I (1875), 18-44; "The Guarantee of Order and Republican Government in the United States," *International Review*, II (1875), 57-87; "Some Checks and Balances in Government," *International Review*, III (1876), 317-36; "The Abnegation of Self-Government," *Princeton Review*, New Series, XII (1883), 209-26.

[19] Manuscript volume of "Lectures on City Government," Lecture I, 34, 40, University of Michigan Historical Collections.

[20] *Ibid.*, Lecture II, 49-50.

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gogic resentment of all property rights, and he deplored this, too. His answer was to repeat the principle of equal rights, and in 1879 he partly excused the radical Kearneyites of California because "there is in their breasts a feeling that class legislation has been making the rich richer and the poor poorer, and the orators' ranting simply affords an occasion for the expression of a secret feeling of the injustice they suffer from."[21] Similar sentiments governed Cooley's response to the emergence of labor and capital as social forces capable of producing class conflict. He did not think the state should intervene on either side, and he emphatically cautioned propertied interests from using the courts for self-protection:

> But as the benefit of this protection is reaped by those who have possessions, the Constitution itself may come to be regarded by considerable classes as an instrument whose office is to protect the rich in the advantages they have secured over the poor and one that should be hated for that reason.[22]

Defending capitalists by saying that not all of them could be condemned as "robbers and plunderers because a few of the most conspicuous have been so," he showed his anxieties when he declared that "poverty is never so much in danger of becoming master as when capital unjustly manipulates the legislation of the country."[23]

Here and elsewhere Cooley groped for solutions to the new problems created by social and economic change. The ambiguity involved in his search for remedies is most apparent in two articles he wrote in 1878 and in 1883 on the role of the state in economic affairs. In the 1878 article he denied that any unlimited legislative power existed in free government.[24] The article was a reply to the loose language of Chief Justice Waite in *Munn* v. *Illinois* that any business "affected with a public interest" became a proper object of governmental control. Cooley opposed the far-reaching implication of such a dictum because it seemed to authorize both unlimited control of purely private rights and unlimited state action *in aid* of anything "affected" with a public interest; it seemed to set a precedent for

[21] *Ibid.*, Lecture IV, 40.

[22] "Labor and Capital Before the Law," *North American Review*, CXXXIX (1884), 514.

[23] *Ibid.*, 515.

[24] "Limits to State Control of Private Business," *Princeton Review*, New Series, I (1878), 233-71.

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monopoly and class legislation. But the individualistic and property protecting aspects of the doctrine of equal rights dominated in the 1878 article.

It was otherwise in 1883. In his article that year on "State Regulation of Corporate Profits," the word "corporate" had a specific meaning, and Cooley accepted a far-ranging state power over the charges of corporate business.[25] Appropriately beginning with his customary caveat against the Dartmouth College case, he continued by illustrating instances where state control over corporations was both constitutional and necessary. In the 1883 article the solidly democratic components of the doctrine of equal rights held sway, and Cooley saw clearly that the public interest was superior to corporate profit and that unrestrained corporate liberty in profit-taking had little support in law or in policy. There was no laissez-faire dogmatizing in his conclusion that "in some kinds of business competition will keep corporations within the limits of reason in their charges. When it will not, it may become necessary to legislate upon profits."[26]

Cooley had always given attention to the importance of the railroad problem, and his participation on the 1882 Advisory Commission on Differential Rates brought a new involvement in railroad affairs. He drafted the report of the Commission, a report which realistically discussed the need for pooling and which also demanded that railroads as public agencies subserve public duties.[27] The report solved no problems but gave Cooley a reputation as a careful commentator. That reputation was enhanced by a much circulated essay he wrote in 1884 on "Legal and Popular Views of Traffic Pooling," which again showed his appreciation for the necessity of pooling and his understanding of popular fears that pooling smacked of monopoly.[28] He also revealed a hope he would try to fulfill on

[25] "State Regulation of Corporate Profits," *North American Review*, CXXXVII (1883), 207-17.

[26] *Ibid.*, 216-17.

[27] The Commission was composed of Cooley, Allen B. Thurman, and E. B. Washburne and had the task of arbitrating trunk line rate differentials to the major Eastern ports. Cooley did most of the work; see his Diary entry on July 25, 1882, and see the *Report of Messrs. Thurman, Washburne, and Cooley, Constituting an Advisory Commission on Differential Rates by Railroads between the West and the Seaboard* (New York, 1882).

[28] "Popular and Legal Views of Traffic Pooling," *Railway Review*, April 26, 1884, 212-14.

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the ICC when he wrote that "the true interests of the owners of railroad property may be made to harmonize perfectly with the true interests of the public, and that it will be as wise for the state to encourage and protect whatever in corporate arrangements is of beneficial tendency as it will be to suppress whatever is mischievous."[29]

In an 1883 letter on railroad commissions Cooley again anticipated his future course when he defined the role of a railroad commissioner as a "friendly umpire between the public on the one hand and the railroads on the other."[30] He characterized railroad managers as sometimes "arrogant, overbearing, and reckless of the rights of others," and he saw the public as sometimes unreasonable in its demands. The aim of standing between these two foes as a "friendly umpire" sounded naive, and a certain innocence was to mark Cooley's later activity on the ICC. And the caution of his first year on the Commission was anticipated in his 1885 advice to the Cullom Committee. He told the Committee that "*a priori* reasoning" and "unreasoning antagonism" were incorrect approaches to the railroad problem, and he worried that existing feeling against railroad managers, some of which was deserved, tended "to strengthen a troublesome, if not dangerous feeling of antagonism to acquired wealth."[31] A certain moralism was present in Cooley's efforts in the letter to distinguish between good and bad railroad men, and moral considerations roused Cooley to old Jacksonian rhetoric when he discussed the tendency of railroad rebates to establish monoply:

> There are several considerations involved which are of no small importance, and one of them concerns the effect upon the imaginations of men of seeing large establishments thus remorselessly crushing out the smaller by the mere force of advantages derived from a public convenience which has been nominally called into existence for the command and equal benefit of all. It is a great public calamity when people in a free country are brought to believe that the tendency of public institutions is to make the strong stronger and the weak weaker.[32]

[29] *Ibid.*, 214.

[30] "Railroad Commissions," *Bullion* (Jan. 1883).

[31] Cooley's letter was printed in the appendix to U.S. Congress, Senate, Select Committee on Interstate Commerce, Report No. 46, 49th Congress, 1st Session, 1886, pp. 8-14.

[32] *Ibid.*, 13. In a draft of a letter from Cooley to Cullom, Aug. 25, 1885, in

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One last involvement of Cooley with railroad matters before 1887 needs to be noted. This was his brief experience in 1886 as receiver of Jay Gould's Wabash Railroad. Federal Circuit Judge Walter Q. Gresham appointed Cooley to the receivership, and in the background of Gresham's choice was an extreme example of the corrupting influence of court-controlled receiverships of railroads. Previous to Gresham's action the Gould interests had themselves opened bankruptcy proceedings and had secured from Federal Circuit Judge David J. Brewer in St. Louis the appointment of two Gould associates as receivers of the Wabash.[33] Their consequent behavior reflected a use of the equity power of the federal courts to readjust the fortunes of the Wabash in a manner which benefitted Gould. Judge Gresham in Chicago overruled Brewer's ruling in so far as it applied to Wabash interests east of the Mississippi. He condemned Brewer's action, removed Brewer's receivers, and appointed Cooley, a symbol of integrity, to clean up the Wabash.[34]

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the Cooley Papers, Cooley used the word "moral" instead of the word "several" in the above quotation.

[33] On this affair, see "A Chapter of Wabash," *North American Review*, CXLVI (1888), 178-93; Julius Grodinsky, *Jay Gould: His Business Career, 1867-1892* (Philadelphia, 1952); Matilda Q. Gresham, *The Life of Walter Gresham*, 2 Vols. (Chicago, 1919).

[34] The affair was to have an ironic twist in 1889 when, with a vacancy on the U.S. Supreme Court, Cooley and Gresham recommended each other for the job, and President Harrison quite naturally appointed Brewer. Gresham, II, 620; Thomas M. Cooley to Mary H. Cooley, March 27, 1889, Cooley Papers. With a Supreme Court where judges like Brewer were dominant, little sympathy could be expected for the regulating activities of the new Interstate Commerce Commission. A basic blow at the Commission would occur in the leading case of *Chicago, Milwaukee and St. Paul Railway Co.* v. *Minnesota* in 1890, and while one of Cooley's last actions on the ICC was to speak out strongly against the Court's decision, Brewer exulted in his participation in a decision he characterized as a "strong and unconquerable fortress in the long struggle between individual rights and public greed." See below for Cooley's views on the decision; Brewer's judgment was made in his article, "Protection to Private Property from Public Attack," *New Englander and Yale Review*, XX (1891), 102. When Marver Bernstein begins his discussion of Cooley's role on the ICC by comparing Cooley to Brewer and commenting: "Cooley, like Brewer, regarded the judges as the spokesmen for the principle of the unfettered rights of property and as protectors of the *status quo* against the threat of popular power," he misjudges Cooley and begins his account of federal regulatory commissions on an unhistorical note. Bernstein, 32.

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II

Cooley was beginning to settle down in his receivership when he heard that his name was being mentioned for the ICC. He wrote his wife that he did not feel there was anything in it to feel elated over, but when President Cleveland wrote that his appointment was almost necessary to a successful administration of the Interstate Commerce Act, Cooley could not refuse.[35] His appointment was recognized universally as an eminently fit one, and both railroad managers and the public felt secure.[36]

On March 31, 1887, the commissioners had their first meeting; Cooley was elected chairman, and the complex organization of the ICC began. The Commission had the responsibility of interpreting and implementing an act which was framed with the intention of allowing considerable administrative discretion. One could say that the Act aimed at "justice," "fairness," and "equal rights" in railroad affairs and allowed the Commission to define these terms. Nobody really knew what the Act meant or how it could be applied to the one hundred thousand miles of railroads and the thousands of towns and millions of people affected. Railroad interests in general agreed with Albert Fink's estimate of the Act as a "dangerous experiment"; they especially feared the implications of the anti-pooling and short-haul clauses.[37] Cooley was himself cautious. Before his appointment he denied in his diary a report that he was strongly in favor of the law; yet he replied to an inquiry from *Bradstreet's* in January 1887 that he thought that an "able and conservative" commission could

[35] Thomas M. Cooley to Mary H. Cooley, Feb. 11, 1887, Cooley Papers; Grover Cleveland to Thomas M. Cooley, Feb. 8, 1887. The letter was misdated, and Cooley noted this "curious" mistake in his diary on March 12, 1887, when he received the letter.

[36] For a survey of press comments on the appointment of Cooley and the other commissioners see *Public Opinion*, April 2, 1887, pp. 535-40; for the approval of the railroad community see the *Railroad Gazette*, March 25, 1887, p. 198; *Railway and Corporation Law Journal*, March 26, 1887; *Railway Review*, March 26, 1887, p. 180. The other commissioners were: Walter Bragg of Alabama, William R. Morrison of Illinois, August Schoonmaker of New York, and Aldace Walker of Vermont.

[37] See Fink's remarks on the Act in the *Railway Review*, Dec. 18, 1886, p. 586. Also see the *Railway Review*, Dec. 25, 1886, p. 689, the *Railroad Gazette*, Jan. 28, 1887, p. 60, and the *Railway and Corporation Law Journal*, Jan. 15, 1887, p. 52.

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"give the law a just and beneficial operation" and make it "accomplish much good and remedy some serious abuses."[38]

As the Commission got down to work Cooley realized immediately that the other commissioners leaned upon him and expected him to show the way. Earnest, serious-minded, and capable of unremitting work, he asserted his views and controlled the general policy of the Commission for the next three years, with one important exception to be noted below. The Commission first asserted its power of inquiry and administrative discretion on the controversial short-haul clause. Temporarily suspending the operation of the clause, the commissioners toured the South in late April and early May to explore the implications of that section of the Act. In June Cooley laid down a rule on the interpretation of the clause which became the guide to all later interpretations and which set a pattern of "equality and justice."[39] The character of the Commission was established, and the *Railway and Corporation Law Journal* commented:

> The Commissioners realize that they are a new court, face to face with new problems which must be solved in the United States, as circumstances demand, in a new way, and that they are to lay the foundations of a new body of American law, adapted to the wants of a new continent and a new railway system.[40]

This was what the ICC proceeded to do in the next few years. As circumstances demanded, and without the benefit of a priori reasoning, the Commission heard cases and began to build up a common law of railway transportation, one that served as the basis for all later ICC rulings. Cooley's common law presuppositions were important in this development, although many of the precedents which he and the Commission set lacked the authority of a court of last resort and were soon to be overruled by the Supreme Court. His interpretation of the meaning of the short-haul clause was to

[38] See Cooley's Diary entry, Jan. 23, 1887, and *Bradstreet's*, Jan. 29, 1887, p. 82.

[39] *In Re Louisville and Nashville Railroad Company*, 1 Interstate Commerce Commission Reports 31; cited hereafter as I.C.C.R. For the estimate of the decision as the guaranty of "equality and justice" and as the basis for all future short-haul decisions, see Ralph L. Dewey, *The Long and Short Haul Principle of Rate Regulation* (Columbus, 1934), 65-73.

[40] June 25, 1887, p. 601.

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be set aside by that court in 1897, and in the same year the Court decided that the ICC's power over rates did not give the Commission the power to prescribe what a reasonable rate was.[41] But in the first months of the Commission that power over rates was exercised and basic precedents for all later rate controversies were laid down.[42] From the beginning the Commission also applied with vigor the anti-discrimination provisions of the Interstate Commerce Act. In cases ranging from discrimination in favor of the Standard Oil Company to discrimination against Negroes by giving them unequal accommodations, the equal rights philosophy of Cooley found an appropriate outlet.[43]

Impartiality and a striving for "equality and justice" marked the Commission's efforts in 1887, but Cooley moved with considerable caution. When the Chicago *Tribune* commented on the circular that the Commission sent out in October 1887 asking for facts on rebates, rates, and short- and long-haul arrangements that "the Interstate Commerce Act is working wonders and the railroad magnates are trembling," Cooley noted in his diary that this was all "sheer bosh." He added: "The law is working as it has been all the while; slowly but surely in one steady direction; working a quiet reform and not a destructive revolution."[44]

Cooley's cautious and impartial efforts to be fair to all the interests involved in railroad matters were evident in the first annual report of the Commission. While the report repeated his indictment

[41] In *Interstate Commerce Commission* v. *Alabama Midland Railway Co.*, 168 U.S. 144 (1897), the Court overrode the Commission's findings of fact and declared that the pressure of competing railways could create substantially "dissimilar" conditions; in *Interstate Commerce Commission* v. *Cincinnati, New Orleans, and Texas Pacific Railway Co.*, 167 U.S. 479 (1897), the Court denied the Commission the power to set rates, Justice Brewer delivering the opinion.

[42] See the discussion of early rate questions in I. L. Sharfman, *The Interstate Commerce Commission: A Study in Administrative Law and Procedure*, 5 Vols. (New York, 1931-37), IV, 15-25, and in Balthasar H. Meyers, *Railway Legislation in the United States* (New York, 1903), 205-17, 230-33.

[43] Sharfman, IV, 359-88, and Cooley's decisions in *Providence Coal Co.* v. *Providence and Worcester Railroad Co.*, 1 I.C.C.R. 107 (1887), and *Rice* v. *Louisville and Nashville Railway Co. et al.*, 1 I.C.C.R. 428 (1888). Although the Commission took a "separate but equal" line in *Heard* v. *Georgia R.R.*, 1 I.C.C.R. 428 (1888), Cooley remarked in his diary of the argument of Heard's counsel: "Mr. Cromwell said with great justice that the only way to have equal accommodations was to have identical accommodations."

[44] Diary, Oct. 26, 1887.

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of the course of American railway history since the Civil War and his criticism of "adventurers" who used the roads for personal ends, Cooley defined the purpose of the Interstate Commerce Act in language that satisfied railroad managers. They did not tremble when they read that "the Act to regulate commerce was not passed to injure any interests but to conserve and protect," or when he said that "the Act was not passed for a day or a year; it had permanent benefits in view, and to accomplish them in the least possible disturbance to the immense interest involved seemed an obvious dictate of duty."[45]

Caution was undoubtedly the better part of administrative valor in the first year of the ICC, and the aim of not disturbing the railroad interest and the intimation that the Commission should protect that interest represented Cooley's equal rights hope in 1887 that private and public interests could be harmonized without injury to anyone. He did, of course, maintain the public interest. The railway commentator James F. Hudson, who can be considered a strong defender of that interest, could praise the first year of the Commission and applaud its "perfect integrity." He did, however, wonder about the Commission's failure to follow up rulings by awarding damages.[46] This issue was one that was complicated by technical constitutional questions; it also was an issue that revealed Cooley's caution and his basic regulatory approach. As he wrote his wife: "The less coercive power we have the greater, I think, will be our moral influence."[47] What Cooley opposed was a "police court" view of the Commission; he preferred to emphasize the "gradual education of the public in the matter of railway transportation, the quiet work we can perform in the improvement of the law and the unification of a railway system."[48]

Considering an approach which emphasized the "hearing of complaints" as narrow, Cooley preferred to take the initiative in a campaign of education and policy reform. He here transcended a

[45] U.S., Interstate Commerce Commission, *Annual Report, 1887* (Washington, D.C., 1887), 19-20.

[46] James F. Hudson, *Railways and the Republic* (3rd ed.; New York, 1889), 485, 490.

[47] Thomas M. Cooley to Mary H. Cooley, Oct. 21, 1888, Cooley Papers. See the discussion of the constitutional problem of awarding damages in Sharfman, IV, 336-37.

[48] Diary, Sept. 19, 1889.

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quasi-judicial view of administrative policy, and he was pleased with the results of such a policy in 1887. In early 1888 he reviewed the first year of the Commission, and noting that some senators might oppose salary increases for the commissioners because the Commission had made "a success of the law" in a way different from that anticipated, he concluded: "A man who wanted to cut and slash, and do the railroads all the mischief possible, will never forgive us for conserving the public interest and at the same time protecting railroad property."[49]

This view of the Commission as educator of public sentiment, exercising moral influence rather than coercive power, insisting on equal rights for railroad property and for the public, could win respect and begin to establish some thoughtful principles of transportation law in 1887. But impartiality and a quiet and careful conservatism did not have a decisive impact on the American railroad problem. Cooley's attitudes were partly responsible, for well meaning and democratic as they were, they reflected the basic ambiguities of the American doctrine of equal rights. Given the condition of national economic problems in the eighteen-eighties it was not enough to act quietly, to respect property rights and public interests with equal energy. It was better to do this than to act partially in favor of privileged property interests (this had been the usual pattern of governmental activities in the decades after the Civil War); it might have been better still to "cut and slash" a little, to identify the public interest as something opposed to property rights. Cooley did not act this way in 1887. He did, however, move in this direction in 1888, and his change of course needs to be noted.

III

The first example of his shift of attitude occurred during the Burlington Railroad strike of 1888. The strike affected all railroad traffic in the Chicago area, and Cooley wondered from the first about the role of the Commission in the affair.[50] It was a mark of his appreciation of the Commission's powers of administrative discretion that he adopted the position he did, since the Commission had no specific authority to intervene in railroad labor controversies. And

[49] *Ibid.*, March 7, 1888.

[50] *Ibid.*, March 9, 1888. On the strike, see Donald L. Murray, *The Great Burlington Strike of 1888, A Case History in Labor Relations* (Cambridge, 1956).

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when he contemplated an investigation of the strike, he did so knowing that this was the desire of the strikers and not that of the Burlington management whose behavior he characterized as "very bad."[51]

On April 2, 1888, Cooley called the attention of the other commissioners to the need to take some action; they were not enthusiastic. Cooley hesitated, but wrote his wife that he thought the Commission could act whenever a railroad company cut wages drastically and caused a strike that paralyzed the commerce of the country.[52] After leaving Washington for two weeks to go to Ann Arbor and to Chicago where he discussed the strike with Burlington officials and with representatives of the strikers, he returned to raise the question again with other members of the Commission. They remained cool, and he noted in his diary that "in all our work up to this time I had not before been so annoyed or disgusted."[53]

The day of April 25 was spent hearing cases and arguing out the matter of intervention. At one point Cooley, who was on the verge of pneumonia, lost consciousness. But he managed to write a summary of the day's events in his diary:

> To construe the law as narrowly as Bragg and Schoonmaker seemed inclined to do, would emasculate it. It was our duty, I thought, to strengthen the law by vigorous action: we ought to make ourselves more felt by the railroads: to be the master of the situation: be the authority in railroad matters and by asserting ourselves take leadership. Much more I said to the same effect, for I felt strongly that our office was about to be rendered ridiculous. I then offered a resolution for an investigation and moved for a vote upon it.[54]

Bragg moved to place the motion on the table; at Walker's request the vote was postponed until eleven o'clock on April 26. But on the twenty-sixth, apparently before the vote, Cooley became seriously ill with pneumonia. Mrs. Cooley rushed to Washington, and in a few days he returned with her to Ann Arbor to convalesce.

It was the first of June before he returned to Washington and the possibility of an investigation does not seem to have been considered seriously again by the Commission. Cooley settled the affair

[51] Diary, April 1, 1888.
[52] Thomas M. Cooley to Mary H. Cooley, April 2, 1888, Cooley Papers.
[53] Diary, April 26, 1888.
[54] *Ibid.*, April 26, 1888.

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in October by getting permission to request the Burlington officials and the strikers to draw up separate accounts of the history of the strike. Cooley noted that the Burlington officials would not like this (and they did not), but surely the writing of a history of the affair suited them better than an inquiry into the merits of the strikers' grievance, a policy that Cooley had vigorously pursued in April.[55]

All this reflected a different attitude on the part of Cooley toward the role of the Commission. A new assertiveness, if not aggressiveness, was apparent, and was cut off by sickness and the complacency of the other commissioners. The incident is an interesting historical might-have-been; a fair federal investigation into the claims of the strikers would have been a major victory for labor and an achievement for the Commission and the principle of federal regulation of business.

Cooley's ambition for the Commission to assert itself, to take leadership, and to make itself "master of the situation" was felt in other ways in 1888, particularly on the question of pooling. Railroad circles began to advocate the repeal of the anti-pooling clause of the Interstate Commerce Act in 1888 when, after a general stability of rates the previous year, rate-cutting began again, especially among roads west of Chicago.[56] Cooley met the problem of pooling head on in a September decision which was concerned with the question of whether unreasonably low rates by a competitor on a long haul justified a railroad's lowering its charges on the short haul.[57] He denied that a competitor's unreasonably low rates presented the dissimilar circumstances which could justify the higher charge on the shorter haul. Of more importance, however, was his reply to the well publicized argument of President A. B. Stickney of the defendant road. Stickney said that in its maintenance of reasonable rates the Commission should declare a rate unreasonably low and order it increased, thus fulfilling a pool's purpose of checking com-

[55] *Ibid.*, Oct. 4, 5, 11, 24, 1888. Murray notes that disinclination of Charles Perkins, the Burlington president, to go along with the request, and he cites a rather forceful letter from Cooley to Perkins in which Cooley repeated his belief that an investigation should have been made (*The Great Burlington Strike*, 172).

[56] See the article "The Interstate Commerce Law and the Northwest," *Bradstreet's*, June 9, 1888, p. 368.

[57] *In Re Chicago, St. Paul, and Kansas City Railway Co.*, 2 I.C.C.R. 231 (1888).

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petition.[58] If the Commission could order unreasonably high rates reduced, why could the Commission not order unreasonably low rates increased? Cooley admitted the plausibility of the argument, but said that the Interstate Commerce Act had to be interpreted in the light of its history, and in that light, its purpose was to protect the general public, not the railroad companies. On the meaning of the terms "just and reasonable" as they applied to rates, he said: "They were employed to establish a maximum limitation for the protection of the public, not a minimum limitation for the protection of reckless carriers against their own action."[59] This was a new reading of the purpose of the Act, and Cooley's decision represented a change from his 1887 hope that public and private interests could be easily harmonized; his opinion affirmatively promoted the public interest in a case that clearly could have allowed him to protect the interests of railroads.

Railroad men were not happy with his action, but he held firm in his insistence on the primacy of the public interest.[60] He continued to oppose the repeal of the anti-pooling clauses and to assert the position that railroads accept responsibility for their own recklessness. More than in 1887 he privately and publicly questioned the manners and morals of railroad managers. His diary in the fall of 1888 reflects a new bitterness over the failure of railroad managers to cooperate with the Commission and repeats his belief that "the great need of the day was to reform railroad managers."[61] As 1888 ended, railroad securities were falling, the railroad press was requesting a change in the law to legalize pooling, and Arthur T. Hadley, who had praised the Commission at the end of 1887, now grew cool and complained of Cooley's view that the purpose of the Interstate Commerce Act was to protect the public rather than the railroads.[62]

[58] See the approval of this argument in *Bradstreet's*, June 9, 1888, p. 368; *Commercial and Financial Chronicle*, June 9, 1888, p. 720; *Railroad Gazette*, August 10, 1888, p. 524.

[59] *In Re Chicago, St. Paul, and Kansas City Railway Co.*, 260.

[60] *Railroad Gazette*, Nov. 23, 1888, p. 770; Feb. 8, 1889, p. 97; *Bradstreet's*, Sept. 22, 1888, p. 607; *Commercial and Financial Chronicle*, Oct. 13, 1888, p. 424.

[61] Diary, Dec. 2, 1888.

[62] Arthur T. Hadley, "Railroad Business under the Interstate Commerce Act," *Quarterly Journal of Economics*, III (1889), 170-87.

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The Second Annual Report of the Commission showed that the relationship between Cooley and the railroads had become one of mutual suspicion. He again refused to discuss the repeal of the anti-pooling clause, and he denied that the Act was responsible for the rate-cutting, the lower earnings, and the general dissatisfaction in railroad circles. Instead, he criticized "reckless" management and worried about the consolidation of railroad power in any form approximating that of a "trust." In language that he would often repeat in the next six months, he spoke of the "overshadowing" power and "mischievous" purposes of anything like a railroad trust. The democratic strain of his equal rights ideas was apparent in these fears, just as they lay behind his rephrasing of the purpose of the Interstate Commerce Act: "It is to bring the railroads of the country under the control of law representing an enlightened public opinion."[63]

This purpose was evident in a well publicized speech Cooley gave in Chicago in December 1888. Lecturing a group of managers on the evils of railroad war, he demanded that they "stand before the community in some other light than lawbreakers."[64] The speech was headlined "Crookedness in Chicago," and was noticed in an important speech Charles Francis Adams Jr. gave in Boston on December 15. Adams said he endorsed "every word of indignant denunciation which Judge Cooley . . . is reported to have uttered recently," and then he went on to denounce railroad men in even harsher terms.[65]

Attracting more favorable attention in railway circles than the lectures of Cooley or Adams was the new course being projected by the presidents of twenty-one Midwestern and Southwestern roads and a group of bankers headed by J. P. Morgan. In January 1889, this group held several meetings at which it created a new traffic association, the Interstate Commerce Railway Association.[66] The association claimed to be a traffic agreement to help enforce the

[63] ICC, *Annual Report, 1888* (Washington, D.C., 1888), 29.

[64] *Address of Thomas M. Cooley of the Interstate Commerce Commission before the General Managers and General Passenger Agents of Lines in the Territory of the Central Traffic and Western States Passenger Association.*, Dec. 12, 1888 (n.p., n.d.), 7, 12. Pamphlet in Cooley Papers.

[65] Charles Francis Adams Jr., *The Interstate Commerce Act; Its Operations and Results* (Boston, 1888).

[66] *Railroad Gazette*, Jan. 11, 1889, pp. 23, 28; Jan. 18, 1889, pp. 40, 45.

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Interstate Commerce Act, but it approximated a pool with power resting in banker participation on the executive committee. The move toward banker control was evident in Morgan's open admission that if the proposed agreement were perfected and bankers given representation on the executive committee, "the houses represented at the meeting would agree to do all in their power to prevent the negotiation of securities for the construction of roads not unanimously approved by such executive committee."[67]

At Boston on January 8, 1889, Cooley gave an address which touched on these developments and which continued his indictment of the morality of railroad managers. He again defended the Act and dismissed the complaints about the anti-pooling and short-haul clauses. The clauses were "just," and the Act had worked well when its provisions were observed. Now, railroad managers "were giving more attention to contrivances for evading the spirit of the law than they were to obeying it." As to "trusts," he spoke of the "merciless power of concentrated capital" and exclaimed: "Anything in the nature of a trust, that should bring the railroads of the country, or of any considerable section of the country under a single head with irresistible power to divide business and make rates, would be more to be dreaded than any other trust ever formed or proposed." And to the desire of railroad men to have the law amended in their interest he responded: "They should show a purpose to obey the law they now have."[68]

IV

Cooley took this tone in a series of speeches in 1889; his efforts at moral education placed severe demands on his health and hastened the end of his active career on the Commission. But these 1889 speeches illustrate the resurgent democratic quality of his equal rights ideas. Those ideas were evident in an April speech to the St. Louis Commercial Club when he contrasted the individualist-minded merchant capitalists of the past with the aggregated power of emerging corporations which seemed "to rise above the State and above the law."[69] The St. Louis speech is significant because it shows the

[67] *Ibid.*, Jan. 18, 1889, p. 40.

[68] *The Interstate Commerce Act: Poolings and Combinations Which Affect Its Operation* (n.p., n.d.), 12, 13, 14. Pamphlet in Cooley Papers.

[69] Clipping from unnamed, undated St. Louis paper in the Cooley Scrapbook, Cooley Papers.

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continuity of Cooley's fear of concentrated corporate power; it could have been given by him in 1870 or in 1850 as well as in 1889.

On a Western inspection and lecture trip in the summer of 1889, Cooley addressed a session of the North Dakota Constitutional Convention. Never was his sense of historic change better related to his grasp of the connection between corporate and constitutional problems. This was doubly important, for what he said represented a reversal of his earlier Jacksonian faith that constitutional limitations on legislative power were necessary to maintain equal rights. Now, the principle of equal rights demanded broad and flexible legislative power:

> In your constitution-making remember that times change, that men change, that new things are invented, new devices, new schemes, new plans, new uses of corporate power. And that thing is going to go on hereafter for all time, and if that period should ever come, which we speak of as the millennium, I still expect that the same thing will continue to go on there, and even in the millennium, people will be studying ways whereby—by means of corporate power—they can circumvent their neighbors. Don't in your constitution making legislate too much. In your constitution you are tieing the hands of the people. Don't do that to any such extent as to prevent the legislative power hereafter from meeting all evils that may be within the reach of proper legislation.[70]

Going on to California, he repeated the same historic view of constitutions, cautioning against rigidity, demanding a consciousness of change, telling men to hold on to the past and at the same time to prepare for a "progressive future."[71] Coming back from his Western trip he tried to persuade Senator Cullom of the need to amend the Interstate Commerce Act by placing all railroad transportation —intrastate and interstate—under the administration of the Commission.[72] Earlier in 1889 he had spoken to this point in a bar association address in New York. There he noted that "the application of steam to locomotion and of electricity to correspondence has

[70] Clipping from the Bismarck *Tribune*, July 18, 1889, in Cooley Scrapbook; also see his Diary, July 17, 1889.

[71] Clippings from San Francisco *Chronicle*, Aug. 4, 6, 1889, in Cooley Scrapbook.

[72] See Cooley's Diary, Sept. 27, 1889, on his special trip to Springfield, Illinois, to see Senator Cullom.

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worked relatively as great a change in government as it has in the industrial world," and he said that if Congress should find it necessary to take over the regulation of intrastate as well as interstate railroads, "it will but add another to the many illustrations already to be seen in our history, which go to show how vast is the edifice that may rightfully be erected within the bounds of single Federal powers, which at first seemed of little importance."[73]

Cooley's Western trip in 1889 was almost his last major effort on the ICC. Earlier in the year he had suffered an epileptiform seizure while traveling from Boston to Washington; similar attacks recurred in the summer and fall of 1889. His son later said that after September of that year his father "was never in real physical vigor, mentally he was unbalanced and able to think clearly only at intervals."[74] This was a climactic moment in the life of a man whose basic democratic philosophy withstood half a century's change and who sought to educate himself and the nation to the acceptance of further change. Despite his feeble condition he continued on the ICC for two more years.

One final irony marked Cooley's experience. As he sought to broaden the powers of the ICC, the federal courts began to stifle the whole process of developing commission regulation. In this effort they relied on that substantive meaning of "due process of law" which had been a theme in Cooley's 1868 *Treatise on Constitutional Limitations*. Yet they moved against the objection of Cooley who neither in 1868 nor in 1890 believed that due process had to be judicial process.

Judicial disrespect for the ICC occurred in the first case appealed to the federal courts. In January 1889 Federal Circuit Judge Howell E. Jackson refused to accept Commission findings and ordered a review of all the facts of a case.[75] A revealing estimate of the issue was given in a lengthy letter in the *Railroad Gazette* in August 1889 by an anonymous railroad manager:

[73] "Comparative Merits of Written and Prescriptive Constitutions," *Proceedings of the 12th Annual Meeting of the New York State Bar Association* (New York, 1889), 47.

[74] Thomas Benton Cooley to Henry W. Rogers, March 11, 1902, Cooley Papers.

[75] *Kentucky and Indiana Bridge Co.* v. *Louisville and Nashville Ry. Co.*, 37 Fed. 567 (1889), overruling 2 I.C.C.R. 162 (1888). The *Railroad Gazette*, Jan. 11, 1889, p. 26, immediately noted the implications, as did the *Railway and Corporation Law Journal*, March 2, 1889, p. 193.

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> I, for one, am opposed to the constant truckling to the unofficial utterance of any one member of the Commission, which has been so conspicuous a feature of the railroad news for a year. We railroad men occupy before the Commission and before the country a far stronger position than we seem heretofore to have assumed, and when the Chairman of the Commission says bluntly that our Chicago brethren are acting "like a parcel of fools," it is time to examine the grounds on which Judge Cooley has a right to promulgate such an opinion.

In his examination this railroad manager took exception to Cooley's moral persuasion; he advised railroad men to heed only the full Commission, and he especially encouraged an appeal to the courts, where he said all Commission findings would be subject to review. He cited Judge Jackson's decision to the effect "that the 'due process of law' of which our great constitution makes so much, has not been forgotten."[76]

The problem of court or commission regulation of railroads entered a new stage in the 1890 decision of the Supreme Court in *Chicago, Milwaukee, and St. Paul Railway Co.* v. *Minnesota.*[77] Although Justice Blatchford's opinion was confusing, it has generally been viewed as one of the first crucial applications of the substantive meaning of the due process clause of the Fourteenth Amendment. Blatchford insisted that the determination of the "reasonableness of rates" in the case in question was a judicial matter and that the Minnesota Commission's determination violated "due process of law."

The railroad press naturally applauded Blatchford's ruling and used it against the ICC.[78] The latter had assumed the power of determining the reasonableness of rates from the first, and in July 1890 exercised this power in a sweeping way by reducing rates on grain on all Midwest roads.[79] Railroad circles protested, claimed a denial of due process, and looked to the courts for protection.[80]

[76] *Railroad Gazette*, Aug. 30, 1889, p. 565, quoted and commented on in *Railway and Corporation Law Journal*, Sept. 7, 1889, p. 181.

[77] 134 U.S. 418 (1890).

[78] *Railroad Gazette*, March 28, 1890, p. 216; April 4, 1890, p. 234.

[79] *In the Matter of Alleged Excessive Freight Rates and Charges on Food Products*, 4 I.C.C.R. 48 (1890), and 4 I.C.C.R. 116 (1890).

[80] See the *Railroad Gazette*, July 11, p. 493; July 18, p. 410; July 25, p. 521; Aug. 8, p. 556; Sept. 19, 1890, p. 650; *Bradstreet's*, Aug. 16, p. 517; Sept. 20, 1890, p. 597.

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Cooley's illness deprived him of direct involvement in the 1890 crisis of court versus commission supervision of rates. His condition, aggravated by his wife's death in September, was one of "pronounced feebleness" by the late fall.[81] But in December he gave two series of lectures and commented on the problem of judicial versus administrative regulation. Lecturing at Yale, he declared that "a reasonable rate is not a question of law," and that commission rulings on rates should be final, for they were "on questions of legislation and administration and are not judicial in character." Returning to Ann Arbor he lectured at the law school on the same theme. He attacked the intervention of the courts in administrative questions and added that "the courts do not as a rule understand transportation by railroad any more than a class of college students."[82]

The Fourth Annual Report of the Commission spelled out in detail the themes of Cooley's lectures. It complained of Judge Jackson's refusal in another case to respect the findings of the Commission, and, predicting what was to be the fate of Commission regulation until the Hepburn Act of 1906, the report pointed out the course that the railroads would follow when courts heard the facts of a case *de novo*: Commission findings would be ignored, new evidence would be brought in, delay and distraction would follow, and the whole regulatory process would founder. To prevent this, the report asked Congress to amend the law by making Commission findings final in so far as facts were concerned.[83]

That Cooley wrote this part of the report is hardly open to question. He had written the major portion of all previous reports, and he was lecturing on these themes when the fourth report was being prepared. And when the report repudiated the idea that courts should judge matters of fact in rate cases, it did so with the same philosophy and some of the same language that Cooley had previously used in his treatise on torts in denying the right of courts to pass on matters of fact in negligence cases.[84] This part of the

[81] Thomas Benton Cooley to Henry W. Rogers, March 11, 1902, Cooley Papers.

[82] Clipping from New Haven *Daily Palladium*, Dec. 4, 1890, in Cooley Papers; manuscript copy of notes by a student of Cooley's "Lectures on the Interstate Commerce Commission," in the Law Library, University of Michigan.

[83] ICC, *Annual Report. 1890* (Washington, D.C., 1890), 8-10.

[84] See the discussion in Cooley's *A Treatise on the Law of Torts or the Wrongs Which Arise Independent of Contract* (Chicago, 1879), 800-05.

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report also met the argument of those who were seeking to establish due process as judicial process in regulatory questions:

> This is an endeavor by the mere use of words to confer jurisdiction upon the courts where the substance is altogether wanting. Property or contract rights are involved in these cases precisely as they are in numerous other cases of the exercise of power under the police authority of the State, either by the State itself or its municipalities.

Even the claim that rates were set so low as to be confiscatory failed to establish a basis for judicial review. The report said the question of confiscatory rates was so complex that no standard of expense existed which the courts could apply; the whole field was "one of judgment in the exercise of a reasonable discretion by the managing powers or by the public authorities in reviewing their action."[85] Concerning Commission review, the report concluded by recommending to Congress a procedure of "administrative due process of law." Neither Congress nor the courts were to heed this part of the report even though the denial that "due process of law" meant judicial process came from the constitutional commentator whose ideas had become authoritative to so many lawyers.

This matter of court or commission regulation reveals Cooley as a democrat marked by a sense of judicial self-restraint and conscious of the role new administrative agencies must play in meeting the complexities of a new industrial order. What he said was consistent with his previous understanding of the role of the judiciary and with his historical sensitivity to change. Arthur Hadley said that if the Commission position on rate determination were to be accepted the nation would be well on the way to "socialism."[86] Of course, neither Hadley nor those modern commentators who see Cooley as an arch-defender of laissez-faire capitalism judge correctly.

The defense of administrative processes of regulation which Cooley made in 1890 was his last significant contribution to the ICC. In 1891 he tried to remain active, but he was unable to leave Ann Arbor. The secretary of the Commission, Edward Moseley, begged him not to resign on grounds that it was essential that he

[85] ICC, *Annual Report, 1890*, pp. 19-20.

[86] Arthur T. Hadley, "Legal Theories of Price Regulation," *Yale Review*, I (1892), 66.

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remain for the imminent difficulties of court determination of Commission proceedings. But Cooley's condition worsened and in September he resigned, to live on for seven more years, a broken man never in full possession of his powers.[87]

Henry Carter Adams, whom Cooley had brought to Washington to organize the statistical bureau of the ICC, called Cooley's collapse a "national calamity."[88] Adams believed that Cooley had tried to develop the meaning of the Interstate Commerce Act by broad administrative interpretation in the same way that Marshall had developed the Constitution.[89] And Adams, like Cooley, believed that the method of administrative interpretation, public education, and statistical analysis was a better beginning approach to the railroad problem than one based on "criminal procedure." In addition, Adams believed that but for an unsympathetic Supreme Court, such a method would have solved the American railroad problem. Cooley was no Marshall, and the American railroad problem has yet to be solved, but had he not suffered his breakdown, Cooley's authoritative defense of the constitutionality of new administrative methods and his understanding of the role of commissions as more than quasi-judicial agencies proceeding by a case-to-case approach might have made a significant difference in the federal regulation of railroads and of business in general.

As it is, Cooley deserves to be recognized as more than a property-protecting reactionary who set precedents for the judicial domination of governmental regulation of economic life. His precedents, when followed, led in another direction. Despite his legalism, his common law historicism, his American individualism, and his nostalgic conservatism, Cooley remained loyal to the democratic fundamentals of the equal rights tradition of his youth. He illustrates both the ambiguity of the doctrine of equal rights and the adaptability of the doctrine to the new needs of a new age. Ultimately, and not without anxiety, he believed in the future rather than the past, in the defense of the public interest rather than the protection of private right, in the ideal of a more humane equality rather than the dogmatism of an unfettered liberty.

[87] Edward A. Moseley to Cooley, July 4, 1891, Cooley Papers.

[88] Henry C. Adams to Charles A. Kent, Nov. 23, 1898, Cooley Papers.

[89] Henry C. Adams, "A Decade of Federal Railway Regulation," *Atlantic Monthly*, LXXXI (1898), 436-39.

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Book Reviews

The Responsible Electorate: Rationality in Presidential Voting, 1936-1960 *by V. O. Key Jr. with the assistance of Milton C. Cummings Jr. Cambridge, Mass., The Belknap Press of Harvard University Press, 1966.—xxi, 158 pp. $4.00.*

The Responsible Electorate aims to challenge, and it would command a great deal of attention quite apart from the fact that it has inadvertently become the last intellectual testament of one of the most profoundly esteemed political scientists of his generation. The book was nearing completion at the time of V.O. Key's death in April 1963. The essential arguments and evidence had been subjected to the criticism of colleagues, and had received what revision Key felt was necessary. Aided by numerous notes and working drafts covering the later portions of the book, Milton Cummings has rounded out the manuscript with painstaking fidelity, and Arthur Maass has provided the foreword.

As usual, any attempt to paraphrase Key's prose is unrewarding. In his own words:

> The perverse and unorthodox argument of this little book is that voters are not fools. To be sure, many individual voters act in odd ways indeed; yet in the large the electorate behaves about as rationally and responsibly as we should expect, given the clarity of the alternatives presented to it and the character of the information available to it. In American presidential campaigns of recent decades the portrait of the American electorate that develops from the data is not one of an electorate straitjacketed by social determinants or moved by subconscious urges triggered by devilishly skillful propagandists (p. 7).

Just how perverse and unorthodox such an argument seems may vary widely from reader to reader. Having myself helped to generate some of the findings which, several translations and simplifications removed, become statements like "voters are fools" and "democracy can't really work," I can readily attest to my own extreme discomfort at such misreadings. In the measure that these are the caricatures that have indeed

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come to the surface over the years, Key's attempts to strike them down are well taken. At the same time, in his genuine concern to strike them down, he risked building an equally oversimplified caricature of the opposing side. Taking full account of the ground Key was unable to cover, as well as that which he did, it seems to me he used his great craft wisely to minimize this risk. The foreword (not, apparently, seen by Key) is less fortunate in this regard, and in pushing the whole book a giant step toward caricature suggests the kinds of oversimplifications which are possible.

One can only move beyond the level of caricature by taking more careful stock of the several different meanings a gross phrase such as "voters are fools" may have. Key begins this job in the quotation above. One meaning of irrationality to Key is linked with "social determinism" and a view of the voter as a sheep following the group herd with blind allegiance. Restiveness at this viewpoint is not new, having been treated brilliantly by Key himself in earlier work. His demonstration that sociological categories with apparent interests at stake almost never vote homogeneously (or switch parties homogeneously) is of course impeccable, and Key was wise enough on the other hand not to suggest, as does the foreword, that such imperfections in bloc voting by social groupings often render them "irrelevant." At the same time, the relation of these facts to the central issue of rationality in voting is left in somewhat troubling disarray, since not a few social theories would argue that group-interest voting is rational, and departures therefrom the irrational products of misinformation.

The matter of social determinism is, however, relegated to the position of a rather minor thread in the ultimate texture Key weaves. His focus is rather upon the question of the quality of the electorate in a more conventional sense. He compiles data from a large number of polls and sample surveys associated with presidential elections over the past thirty years, isolates those respondents who report that their party choice has changed since the preceding election, and then asks whether such "switchers" differ from "standpatters" and new voters with respect to issues prominent in each election. He usually finds correlations, many of them strong, between such issue positions and the parties toward or away from which the switchers are moving. He concludes that if one is interested in the gross motions of the popular voting system that maintain parties in the White House or throw them out, then the issue roots of such critical electoral motion are more numerous and important than earlier accounts have suggested.

I think that such a corrective, carried this far, is a welcome one, and one of the central contributions of the volume. While students in this

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area have not been insensitive to the systemic importance of "switchers" and have indeed focused a fair amount of attention on them, interest has frequently been frustrated by the small numbers of cases of switchers in most single surveys, as well as the many demonstrable frailties of the four-year recall data typically necessary to define who is actually switching parties and who is not. The first difficulty Key outflanks by pyramiding large numbers of surveys into a single analysis. The second problem, of course, remains, and while Key repeats a number of the appropriate caveats, their significance is quite predictably lost for the simplistic reader in the rush of conclusions.

To my mind there are sticky problems of method and causal interpretation in the study which could themselves sustain a discussion of a full review's length. It is much my preference here, however, to take the data at their full face value, and ask how firm is their bearing on the broader case for rationality and responsibility in voting that Key wished to make.

I am disappointed in the first instance at the lack of definition the problem of rationality is given. Fifty years ago or more, when the rational-irrational distinction was left at a gross and supposedly self-evident level, "irrational behavior" referred to kinds of behavior borne along by deep-seated emotional urges in channels that were maladaptive when compared with "objective reality." For many years, however, it has been recognized that the rational-irrational dichotomy in this form is quite inadequate. Apparently irrational behavior (to the outside observer) in many domains is much more frequently "rational" within the terms of the highly imperfect information available to the actor, than it is the product of uncontrollable surges of the id and gross perceptual distortions of accessible reality. The difference is roughly that between the man who "irrationally" stays in the room of a burning hotel after he has heard the fire alarm because he is paralyzed by fear, and the man who stays because he was singing in the shower and failed to hear the alarm at all. From any point of view—practical, substantive, methodological, theoretical—the difference is enormously important in the comprehension of behavior, although Key's text never draws the distinction and frequently seems to treat these syndromes interchangeably.

The importance of the difference is as great in this specific case as anywhere else. When Key expresses doubt at the role of the subconscious or "father images" in determining the occupancy of the White House, he strikes me as being on very firm ground, although I am not sure that an adversary would grant that his data were particularly incisive on the point. While spectacular exceptions do arise in critical times and around the fringes of politics, it seems to me that evidence is massive to the effect that voting choices are too casual and peripheral for most of the public

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most of the time to be very rigidly geared into the high-key personality dynamics which make or break marriages, and raise or ruin careers.

Where the "irrationality" of imperfect information and the quality of the electorate are concerned, however, the case is totally different, and here Key approaches the problem only tangentially. His data show that switches in party preference and reactions to issue questions display a fair congruence, and we may infer that at least some voters in swing roles have sufficient information about competing parties and their positions to bring the two into line; at best, we can imagine that the issues were the prime movers in touching off the change. Yet this is a rather modest demonstration, if one wishes to draw broad conclusions concerning the informed nature of the mass electorate. I am reminded of a stray poll once conducted during the height of excitement at the building of the Berlin Wall. Opinions as to what the government should do about this affront were quite varied, from the timid and hesitant to bellicose demands that we straightway take over the whole of Berlin. While this incident did not happen to remain salient long enough to dominate an election, it would be within the Key reasoning to imagine that reactions of satisfaction and dissatisfaction over the administration's response might have contributed their weight to shifts of votes toward and away from the ruling party. In other words, a rational, responsible citizenry. Yet unlike most of the polls Key used, this one perversely went beyond the simple opinion item to explore the nature of the information about the Berlin situation underlying the responses. Numerous rather shocking findings were turned up (as seems always the case), including the fact that a distinct minority of the respondents realized that Berlin was encircled by hostile military forces. Opinions, be they ever so fervent, are no proof of informedness. And the formation of strong opinions in total innocence of the most basic and accessible parameters of a situation can hardly be classified as either "rational" or "responsible" in the conventional senses assumed here.

While the presence of reasonable amounts of information would seem to be a very critical ingredient in the question Key wished to confront, one can look in vain throughout the volume for any recognition of the problem in this form. Short of a few very indirect tables examining "no opinion" responses, no data are introduced which bear at all on the information problem, despite the fact that data abound and are rarely equivocal. One wonders, in examining tables such as that dealing with reactions to the controversial old-age annuity provisions of the Social Security Act (in 1936) (p. 43) what information the respective sets of pleased and disgruntled voters brought to the issue. More recently, resistance to registration for Medicare among some senior citizens has often been found

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to stem from misinformation so dire as to make the American Medical Association itself blush. Key's own text on this subject is not entirely reassuring, if he wishes to argue that the voter is shrewd enough to see through the more outrageous forms of political humbug (p. 41). Yet even here the text seems oddly ambiguous: at an early point he observes that "the voice of the people is but an echo," and notes that if the input to the echo chamber is nonsense, its output with be nonsense as well. While I prize the latter figure as an ingenious and apt one, it seems to run at cross purposes to some of the major themes of the book. It prepares the reader deftly for proof that the electorate is a more *responsive* one along issue lines than others have supposed, and some interesting evidence is then supplied. But a responsive electorate need not be a responsible one, or notably rational, as the book's titles suggest.

Although Key meets the 1960 election head-on with a full chapter near the end of the book (heavily reconstructed from notes), it presents something of a problem for his general analysis. One would be hard pressed to avoid the fact that the main lines of vote-switching, 1956-60, were clearly sociological and hence irrational from Key's point of view. Moreover, by general consensus of both party elites, the religious issue was an ignoble and primeval one. Key deals with this situation by arguing that the 1960 election was characterized by a dearth of the more basic and legitimate issues that had been prominent in the earlier elections of the series. Into this relative vacuum something had to move, and the role devolved to simple group allegiances.

An opposing reconstruction of the 1960 election holds that the religious issue, despite attempts to softpedal it, burst forth willy-nilly and quite eclipsed a field of issues less stirring perhaps than those of 1952, but certainly as stirring as those of 1956. This latter reading of course suggests quite a different set of priorities, and is considerably less flattering to the electorate than Key wished to be. Yet Key's own data elsewhere in the book lend little support to his reconstruction. Turnout in 1960 was relatively high for the series, suggesting unusual voter excitement in that year. Moreover, the election was marked by higher absolute levels of "switching" than in any of the rest of the set of elections stretching back to 1936. These facts hardly confirm the suggestion that there was any natural dearth of short-term forces in 1960. Instead, they imply that in the face of efforts to muffle it, the religious issue generated a breadth of responsiveness in the electorate that the more elevated issues of the preceding elections had failed to achieve. The output from the echo chamber fell rather dismally short of the input.

V. O. Key was concerned with the health and viability of popular democratic government, and *The Responsible Electorate* expresses that

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concern. Some of the best passages in the book attempt to sketch in broad strokes both the critical functions and realistic limitations of popular voting in our political process. However severe my doubts about Key's treatment of the information problem, I do not feel that these differences in perspective call into question Key's broadest judgments about system functioning. That the popular vote decision is usually retrospective, based on past performance, rather than a response to promises for the future, and hinged primarily to dissatisfactions rather than satisfactions, fits well with any evidence that I know. Voting in this context is a more fallible and less sensitive control system than classical accounts supposed, but it remains a control system nonetheless, and one which we would not be eager to do without in an advanced society. I would agree with Key's belief that the most sensitive aspect of the control system lies in the politician's concern not to be turned out of office, and the steps he takes between elections to minimize this risk. It might be argued that emphasis on the information problem tends to deaden the sensitivity of this segment of the control system, in as much as it may give the politician a sense of latitude about his actions he might otherwise fear to take. But politicians are not fools, either, and on balance already have more realistic information about their trade than such an apprehension would imply.

All of which is to suggest that, caricatures to the contrary, the fundamentally salutary functions of democracy are not at stake here. Nor are Key's findings as sharply discontinuous from past work in the area as the lay reader might construe, although as ever he has given a fresh turn to a recalcitrant subject and pointed with characteristic wisdom and insight to reassuring facets of the democratic process which have been hitherto overlooked.

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Comparing Nations: The Use of Quantitative Data in Cross-National Research *edited by Richard L. Merritt and Stein Rokkan. New Haven and London, Yale University Press, 1966.—xv, 584 pp. $12.50.*

To enlarge the social sciences by comparable, quantitative evidence from many nations is an inspiring prospect. Phenomena could be described with accuracy and precision, and their generality determined. Specificities could be located and then related to social, historical, national, or regional variables. Theories could be subjected to ultimate tests under a wide variety of conditions.

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In one form, this prospect is realistic in our time. The social bookkeeping of governments and international agencies has long since generated time series on many conventional variables but, more recently, large-scale survey research has also produced data for many countries on other variables of scientific interest. As these data are organized into archives accessible to scholars and are cast into such other serviceable forms as handbooks presenting national distributions (like Bruce M. Russett *et al., World Handbook of Political and Social Indicators* [New Haven, 1966]), and as the procedures and problems of cross-national secondary analysis become codified, a new era may dawn. The prospect is hastened by the computer which creates new modes for storing and retrieving relevant data and for efficient multi-variate analysis.

The exciting prospect is already underway. The book under review is a collection of twenty-four papers from one of a series of international conferences, in which many scholars met to discuss the problem and organize the enterprise. Such conferences must be greeted with joy; the publication of this volume can only be greeted with sadness. Such a conference can be permissive; the book that casts this conference in permanent type should be disciplined.

Certainly some of the papers now printed are guidelines. Part IV contains excellent papers on the development of data archives, information retrieval, and the technical and organizational problems of comparative research on nations via secondary analysis. Part II reports exciting work in progress, using nations as units of analysis, under several large-scale programs of cross-national quantitative research. In the context of this discussion, problems of method and theory come into focus, and the prospects of important findings become visible.

Part I on theory and method is a shaky foundation. First Rokkan presents an historical review and a classificatory schema for comparative research. He covers many social sciences spread over time and space, awarding medals as he goes along. This is "most insightful"; that is "the single most important volume"; something else is "magnificent." Why some things are included and other milestones omitted is difficult to say. No reference is made to the Roper Center, the first and still the largest of all archives for secondary analysis. The judgments seem capricious, but, at least it is an orderly and provocative account and sets the stage, from which we plunge with Karl Deutsch into theory and method and sink deeper and deeper.

Deutsch's chapter touches everything and elaborates nothing. Many statements float unattached in the vasty deep he explores. "Literacy is a key variable, insofar as it indicates educational level." A key for what theory or problem? One never finds out. The utility of handbooks of data

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is that "we might now specify what contingencies or correlations each theory predicts." Again the reader waits to learn which theory in what discipline should be tested by what data. After covering theory, Deutsch classifies all the varieties of data. For example, "Sample surveys are divided into the polling techniques of asking a very few questions of very many people, and the depth surveys where very few people are asked many questions. . . ." Lincoln was a better typologist: What about the surveys which ask many people many questions? Deutsch urges "the systematic correlation of these data." All of them? That is the implication, but some examples are given. "We do not even know, for instance, how well the Adorno F-scale correlates with the Minnesota Personality Inventory." That ain't easy to know! The inventory can be scored for a dozen different variables, and the dozen correlations with F can be obtained for a thousand times and places, yielding different values—some of them known. But, before we can ponder what we would do with all those correlations anyway, we are plunged into another for instance: "we do not yet know what the correlation is between a cultural pattern —for instance, of a Weberian 'Protestant spirit' . . . and particular, measurable traits emerging in content analyses." We never learn "which traits" to include in this little inquiry. So it goes from one giant, vague suggestion to the next, Deutsch stating what has not been done and what ought to be done with no sense of proportion.

Carl Friedrich ends the introductory section with a brief discourse on the limitations and problems in using quantitative data in the study of politics. It is wise and cautionary.

The methodological foundations of this work are strengthened by two other papers sandwiched into Parts II and IV. Scheuch presents a careful treatment of problems in using "aggregate data" in cross-national research, but the reader becomes distracted and confused by the basic terminological distinction and opposition suggested between aggregate and individual data. Aggregate data are simply individual data aggregated for the populations of various social units, such as regions or nations. Sometimes Scheuch intends this usage and he discusses effectively the hazards in the aggregation and analysis of individual data for the comparative study of national units. Many of the other problems which he labels with the same two terms have nothing to do with aggregation, but rather with the errors that arise in collecting original data on individuals. And other problems that are central to the research in progress relate to global properties emergent only at the level of nations, for example, number of wars fought, and have no correspondence either in individual or aggregate data. Clarity is lost by lumping all sorts of things under the polar terms, aggregate and individual. A gem of a paper by Converse in Part

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IV begins on a discussion of the archives of American survey data, and ends on an excellent treatment of errors that arise in collecting individual data by sample surveys. The point he makes is fundamental to all the research presented in Part III, and should have been noted a dozen times. It is ignored.

Part III deals with the general topic "Cross-National Comparisons of Within-Nation Differences," in which, instead of taking nations as objects of study and comparing them on one or more unit characteristics, one studies distributions or patterns of characteristics among sub-groups within nations, and then compares the patternings in different national contexts. Thus Fox and Miller present a comparative study of stratification and social mobility, and Lerner develops a typology of the different ways nations may handle the relations between the central and peripheral parts of the society.

Everything seems to be clear, but disorientation afflicts the reader when Szalai presents his exciting discussion and analysis of time budget data for different strata in Hungary, and Merritt presents a beautifully worked secondary analysis of differences between West Berliners and the rest of West Germany. These are not cross-national comparisons at all. They might become that when somebody else does the same study in another country and juxtaposes the two sets of findings. But in that sense, every other one-country survey that has ever been done would also qualify for inclusion in the book. A masterful, scholarly paper by Linz and Miguel on "The Eight Spains" stretches the argument further. The contextual units within which patterns can be analyzed can be smaller than nations, and Linz and Miguel present findings for groups of provinces. Granted that the formal procedures are the same, that this level of unit promises fruitful findings, and ultimately that parallel contextual analyses within a series of nations would show how a given sub-national contextual variable has differential effects within different larger national contexts, the paper is still several steps removed from cross-national comparison. By the same token one might have had essays on the two United States, the South and North, or presented survey analyses based on American regional and state polls where, for example, Ennis has shown that class differences in politics are smaller in small town America than in big city America. There is much of value contained within this work, but one wishes greater care and selectivity had been exercised. Speed the conferences onward, work the computer faster, but slow down the printing press.

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Political Culture and Political Development *edited by Lucian W. Pye and Sidney Verba. Princeton, Princeton University Press, 1965.—x, 574 pp. $10.00.*

Fashions come and go, and each new one harks back to an older style, usually without acknowledging it. Presently the concept of political culture is in vogue, and not without some good reasons. It is part of the functionalist terminology introduced into the comparative study of political development by Gabriel Almond and his collaborators. The concept of political culture was designed to get away from the older institutional approach of political science as well as from vague metapsychological notions such as national character. Specifically, the concept makes it possible for functionalists to take into account historical factors and cultural uniqueness. It relegates terms like ideology and *Weltanschauung* to a deservedly secondary position. It also permits the analyst to look beyond atomistic attitude surveys to the beliefs and values that actually support (or handicap) the functioning of a political order; by political culture is meant here the value ambiance surrounding and sustaining institutional processes; culture is "civic" if it is integrative as well as pluralistic.

The volume is a kind of sequel to Almond and Verba's *Civic Culture.* Pye provides an introduction and Verba a theoretical summing-up. Both expositions are well balanced, even restrained in their claims, and make good introductory reading; hence they can substitute for textbooks which in this rapidly expanding field are outdated almost immediately. The ten case studies are quite well written; a number of area specialists already known for their research were asked to reorganize their knowledge in terms of the volume's key concepts. At its worst, this procedure results in the somewhat mechanical or arbitrary application of terms such as input and output, aggregation and articulation (for example, taxation and conscription are dubbed outputs, when they could just as well be considered inputs). At its best, this approach is a good test of the illuminating power of the concepts used.

The editors do not claim, of course, that "political culture" is a new concept, but they are not much interested in its derivation or antecedents. Terminological discontinuity may, however, be indicative of theoretical discontinuity. The presence or absence of an integrated political culture is obviously a major factor in modernization and industrialization. The "traditional modernity" of a culture, as Robert Ward (on Japan), Richard Rose (on England), and Dankwart Rustow (on Turkey) show, can greatly facilitate political and economic development. Rustow, for example, points out that the Ottoman empire was more modern in the sixteenth

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century than the contemporary European states (with regard to orderly administration and effective communication). Here it becomes apparent that one antecedent of "modernization" is Max Weber's "rationalization"; moreover, Weber's analysis of the patrimonial-bureaucratic state and its value basis is an important contribution to what is now called "political culture." However, there is no mention of his work or of his brother's *Kultursoziologie*, which would also be relevant here. The same theoretical discontinuity appears in Donald Levine's fascinating account of one of the last surviving patrimonial states, Ethiopia.

Traditional modernity, as in England, may eventually become an impediment to further change and necessitate—the term was inevitable—"remodernization." On closer inspection, remodernization turns out to be in part a terminological substitute for centralized economic planning, its historical antecedent being the mercantilism of the patrimonial state.

Since Verba is the only contributor to present both a theoretical statement and a case study, the only empirical criticism for which there is space shall be concerned with his informative treatment of the Federal Republic of Germany. Verba is justifiably critical of some of the past over-generalizations, but his analysis relies heavily on attitude surveys (including the rather crude early military government data) and hence tends to have more to say on individual attitudes than on political culture. Contrary to Verba, I would emphasize the internal viability of German political culture before and after the First World War and attribute its failure in large part to the enormous pressures that came to bear on the "system" from the outside. Such an explanation runs counter to structural viewpoints and smacks of apology, but it appears to me closer to the truth. Finally, I have considerable doubt about the author's view (advanced by others) that the "turning in upon the family" and privitization are specific post-World War II occurrences. It seems to me that these are also important phenomena of totalitarian culture. The Nazi takeover of 1933 turned hundreds of thousands of families in upon themselves; after all, there were millions of Social Democratic, Communist, and Center voters who subsequently had no safe choice but private retreat. The Hitler Youth was unhappy enough about these persistent family influences.

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The Politics of Modernization *by David E. Apter. Chicago and London, University of Chicago Press, 1965.—xvi, 481 pp. $7.50.*

Long untouched, the field of political development is the terrain for a modern gold rush of political scientists. This new field has yielded great

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riches of new data, new approaches, new conceptions, and new theory, and these in turn have already had important effects upon comparative political analysis.

This new book by David Apter represents an important contribution. It is a successful attempt to put together old and new ideas into a suggestive taxonomy of the changing patterns of political modernization. It is particularly interesting also in that it suggests several frameworks upon which to organize data in a useful way for the comparative political analysis of countries in the process of modernization.

The organization of the volume permits the author to deal with admittedly fundamental aspects of modernization. He includes chapter-length treatments of the role of tradition, ideology, stratification, the political party as a modernizing instrument (no full length discussion of bureaucracy), and the mobilization system and its alternatives.

In his analysis of modernizing political systems, Apter employs structural-functional analysis with all the well known assets and liabilities of that approach. According to him the major functional requisites of a modernizing political system are coercion and information, and changes in the proportion of one to the other will lead to changes in the structural requisites: authority and accountability. Different arrangements of these relationships produce different types of political systems.

This volume offers a number of interesting models and typologies of political systems. For example, Apter erects a model at the extreme ends of the continuum between secular and sacred authority systems. His sacred collectivity and secular libertarian models make it possible to highlight crucial differences among modernizing political systems. In between such idealized extremes Apter presents a number of models that are more realistic approximations of actual political systems—for example, the mobilization system, the reconciliations system, the modernizing autocracy, the military oligarchy, and the neomercantilist society—each type of system dealing with the problems of modernization in significantly different ways.

Space permits only the briefest comments on some specific points. For Apter, development is a special case of social change, modernization, a special case of development, and industrialization, a special case of modernization. Thus he sees modernization occurring in many non-Western areas which are still pre-industrial. Brief and intriguing references to the crucial relationship between industrialization and *political* modernization are scattered through the volume, but the relationship between the two processes of development remains unclear. For my part, I would like to have seen it developed more fully.

A second criticism concerns the normative orientation of the volume,

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particularly of the last chapter where Apter asserts that the increase of information essential to an industrial system almost dictates that the political system should move toward democratic forms. This smacks of the wishful theorizing that has haunted Western sociology from its origin and that is so particularly typical of structural-functional analysis.

This book should be read, for it contains some new and useful theoretical ideas, which is a good deal to say for a book. It is perhaps unfortunate that the Parsonian tradition extends to the style as well as to the substance, but the reader who persists and reads on to the end will find it well worth his while.

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Political Argument *by Brian Barry. New York, Humanities Press, 1965.—xviii, 364 pp. $8.00.*

This is a study of broader scope and deeper interest than the title might indicate. It does not deal with the techniques of political argumentation. Nor does it argue in favor of any goals, and hence it does not belong to normative political ethics. It is a study in analytic political philosophy, concerned with the question: Given the multiplicity of basic, often competing, goals generally adopted in contemporary Western democracies, how can the criteria of rational choice be applied to arrive at a "consistent pattern of preference"? (p. 4). In answering, the author classifies these goals and explicates the corresponding concepts.

Barry deals primarily with "want-regarding" theories according to which government should satisfy the citizen's material wants, "whatever their objects may be" (p. 41). "Ideal-regarding principles," defined negatively as the contradictory of the former (p. 39), stipulate that government ought to pursue certain goals independently of the citizen's actual wants and preferences; for example, J. S. Mill's higher pleasures or moral and cultural values (and presumably also nationalistic or racist goals). There are distributive and aggregative want-regarding principles. The former specify "the way in which want-satisfaction is to be divided among the members of a reference group" (p. 43) and include the goals of legal justice, equality, equity, and freedom. The latter focus on the total amount of want-satisfaction, the public interest being the foremost example. Separate chapters analyze each of these goals, and also deal with such related concepts as liberalism and conservatism and welfare and the common good. The last fifty pages, on constitutional choice and the public interest, examine critically *The Calculus of Consent* by J. M. Buchanan and G. Tul-

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lock. The author brings a thorough training in political science, welfare economics, and analytic philosophy to his subject, and its breadth is by no means achieved at the sacrifice of depth. The analysis of each concept is probing, original, and thought-provoking. It is bound to raise questions, only a few of which can be indicated here.

Barry considers classical liberalism a want-regarding principle, according to which "the state is an instrument for satisfying the wants that men happen to have rather than a means of making good men" (p. 66). What he does not point out is that liberalism is primarily concerned with *the way* in which government should bring about want-satisfaction: not directly, but by leaving everyone free to pursue his own happiness in his own way.

Freedom, too, figures among the want-regarding goals; but it turns out that this holds true only if freedom is equated with want-satisfaction itself —a confusion of which advocates of "positive freedom" are guilty. Freedom in the sense of self-determination (another confusion!) is an ideal-regarding concept (p. 140). Barry points out correctly that "the most usual way of defining 'freedom' " is in the sense of "negative freedom" as "contrasted with interference" (p. 141). He does not, and probably could not, fit freedom in this (the proper) sense into either of his two categories. He merely shows that negative freedom may be considered a means to other goals which themselves may be either want-regarding (for example, freedom promotes want-satisfaction) or ideal-regarding (for example, freedom is conducive to "innovation in behaviour and ideas" [p. 144]).

Curiously, the lengthy chapter on the concept of interest lacks the clarity of Barry's own succinct article in *Nomos V* (1962), in which he defined "X is in A's interests" by: A would want X "if he were rational and not altruistic or principled in a certain way" (p. 191), for example, by consideration of justice. That A must be considered a rational egoist does not come out clearly in the book, where "X is in A's interests" is equated with "A wants the results of X" (p. 181). However, these queries are an indication of the stimulation to be derived from this work.

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On Dealing with the Communist World *by George F. Kennan. New York and Evanston, Harper and Row for the Council on Foreign Relations, 1964.—xi, 57 pp. $3.00.*

The book published under this title is made up of three lectures delivered by George F. Kennan shortly after his return to the United States after

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two and a half years of service as our Ambassador to one of the Communist countries of Eastern Europe. Ambassador Kennan has long been recognized as one of the relatively few experts in the field of Communist ideology and activity.

In the foreword to the publication Mr. Kennan suggests that it would be preferable if we could drop the term "Communist" in considering the various countries generally included under that label, since it is not an adequate term "to bring out the differences that prevail as between the various 'Communist' countries."

Mr. Kennan takes as a premise that coexistence is the way of life to be expected, in fact, that it has been developing gradually over the years. He belittles the liberationists and warns against the idea advanced by some that the Soviet leaders are bluffing.

Two points are made secondary to the argument: (1) changes have been taking place in the Soviet Union; and (2) there has been a growth in the destructiveness of nuclear war.

As may be assumed, Ambassador Kennan advocates the development of East-West trade not necessarily for the amount of business that would be involved, but as one method of having the two sides meet and talk on a subject that should be relatively easy. He points out that the total trade that could be expected to evolve would be a very small part of the total trade of the United States.

Even as to the development of this trade, small as it may be, recognition is given to the sensitivity of the Western world, particularly the United States, to the changes that would be required. Mr. Kennan recognizes the emotional overtones of the subject. He proceeds then to list some considerations that should be remembered in developing a sensible policy on East-West trade: (1) Relax, do not make such heavy sledding of it, since the issue is of minor importance to both sides; (2) Whatever our guiding principles may be, there should be flexibility to allow someone to act in the national interest; (3) We should remember, as to our associates in Western Europe, that different considerations apply to normal trade than in our own case, but we should be concerned with trading practices that might affect our collective defense (oil shipments, for example). This will ease our relationship with our allies and associates.

The subject of his third lecture, "Polycentrism and Western Policy," gives an opportunity to discuss interestingly and with considerable logic changes that are taking place in the Communist world. The establishment of "a plurality of independent or partially independent centers of authority" within the Communist bloc tends to break up the Communist monolith and to develop considerable independence on the part of the various Communist countries.

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The typical example, and really the first example of this break-up, came with the Yugoslav defection. The argument is made that "the unity of the bloc never recovered from the shock of the Yugoslav defection." Other satellite countries of Eastern Europe, seeing that Yugoslavia could defect and still maintain considerable status and independence, began to show signs of greater independence. He points particularly to the Polish and Hungarian outbreaks in 1956.

Another event that accompanied the Yugoslav defection was the increasing disagreement between the Soviet and the Chinese Communist regimes. It is stated that this rivalry "was latent from the beginning," but that it began to show up only after Stalin's death. What was "once a unified and disciplined bloc has disintegrated into something more like an uneasy alliance between two ideologically similar commonwealths: one grouped around the Soviet Union, the other around China."

The ability of little Albania to embrace the Chinese Communist line in defiance of its mighty neighbor, the Soviet Union, is cited to indicate the inherent weakness of the monolithic Communist structure.

While Mr. Kennan points out that the West is confronted with the question "whether to promote a trend toward further polycentrism," he recognizes that the final outcome is not completely within the control of the Western powers and that, as a matter of fact, in order to bring about an extension of polycentrism and to take advantage of it many changes would have to come about; for example, in connection with divided Germany and the present structure and policy of NATO.

Mr. Kennan believes apparently that coexistence is possible and, in fact, that it is virtually inevitable in a world which seeks to avoid a nuclear clash. As lecturer and writer, he is forceful in presenting his argument.

JOHN SPARKMAN
United States Senate

The Obligations of Power: American Diplomacy in the Search for Peace *by Harlan Cleveland. New York and London, Harper and Row, 1966.—ix, 168 pp. $4.50.*

This is a wise, thought-provoking, and readable presentation of U.S. foreign policy today. The author knows that policy from the inside, believes in its principles, and gives his reasons persuasively. As a student, Rhodes Scholar, and for five years dean of the School of Citizenship and Public Affairs of Syracuse University, his approach is a fresh one, avoiding truisms or cant. He is the unusual combination of egghead and realist.

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What does such a man think about the United Nations, to which, as the Assistant Secretary of State for International Organization, he was heavily exposed for five years? His belief in it has survived even that experience. But he reveals candidly how its ideals and objectives shrink in the practicalities of the groping for decision and action. Fortunately the United States' objective which he cites, "making the world safe for diversity," a phrase President Kennedy used, is less damaged in practice than more idealistic aims. Also it much better befits a great power, whose every move is viewed with suspicion.

In his discussion of the United Nations one principle stands out clearly, the need for a "third man" to help keep peace, a police force, an inspector, a negotiator. He gives credit to Lester Pearson for originating the UN peace force at the time of Suez. Despite serious difficulties and limitations the need and the concept are inescapable.

In its 168 pages, this book pictures vividly the appalling complexity of foreign policy today. The United States belongs to fifty-three international organizations and attends some six hundred international conferences a year. In addition there are nearly 1,500 private international organizations which hold three thousand conferences a year. These also Ambassador Cleveland considers important in the pursuance of foreign policy. He graphically heads one chapter "Peace Comes in Parcels." The end result is the product of innumerable discussions, persuasions, resolutions, and actions.

Thus foreign policy does not fit into neat patterns. But progress has been and is being made. One of the author's best demonstrations of the methods which have succeeded is in Chapter 7, which traces the gradual building of the network of postwar international organizations in response to specific needs. They add up to something new and impressive and enduring.

The important lesson of all this seems to be that we need not despair when the United Nations falls short of becoming the great parliament of man, or when the Common Market does not leap to become a united Europe, or Atlantic unity seems painfully slow to emerge. Step by step in practical ways, great advances have been made by building mechanisms to carry out specific functions.

I repeat from this chapter (pp. 100-01) a few phrases to show the political merits of these functional organisms:

> Organizations like these begin by taking the world as it is. . . .
> . . . start from where we are, and then take the next step. . . .
> . . . tackle jobs that can be managed through imperfect instiutions by fallible men and women. . . .
> . . . bypass the obstacle of sovereignty. . . .

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> . . . can readily grow with the need and adapt to the new tasks made possible by new technologies.

From my own experience I can endorse the author's statement that "healthy institutions, like healthy cells, grow organically, by evolution" (p. 101).

The reader of this review may well be asking, "But, how about NATO: is that really moving forward?" At this moment of writing the answer is not clear. My own belief is that NATO will prove no exception to the law of functional growth which Dr. Cleveland expounds. One reason for such optimism is that Ambassador Cleveland is now representing the United States on the NATO Council.

The author of this book believes—and I agree with him—that our country has the tools for a successful foreign policy even in the face of fearful problems. The result depends on the people who administer that policy and the people who back them up.

W. Randolph Burgess
Washington, D.C.

The Paranoid Style in American Politics and Other Essays *by Richard Hofstadter. New York, Alfred A. Knopf, 1965.—xiv, 315, xii pp. $5.95.*

Professor Hofstadter's new book of essays begins with a ready admission that "the most difficult and delicate task that faces the author of a book of essays is that of writing an introduction that makes his various pieces seem considerably more unified, in theme and argument, than they were in fact when they were written." All that is common to these essays, as he admits, is "that the several parts, as the product of a single mind, have a certain stamp upon them." Such unity, it must be said, is more apparent to the author than to the reviewer; the contents are varied, and while they are all delightfully easy to read it can hardly be said that they hang together in a particular way. There are two parts to the book, dealing with "Studies in the American Right" and "Some Problems of the Modern Era." The first is labeled accurately enough, dealing as it does with pseudo-conservatism, Goldwater, and the topic which has given the book its title, and has also provided what is perhaps the most interesting contribution made by Hofstadter. As regards the second part, the term "modern era" is used in an historical sense, that is, it does not signify our present times but deals with such historical events as the anti-trust movement, the silver controversy and the writings of "Coin" Harvey, and the

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acquisition by the United States of the Philippine Islands after the war with Spain. One may gather from Hofstadter that just as English people believe that England collected an empire in a fit of absent-mindedness, so America followed suit in the Philippines and elsewhere. As Americans have found the English claim hard to swallow, so a non-American (or should it be un-American?) reviewer may find it difficult to suppress a smile at what sometimes looks like special pleading.

As the chapter on "Cuba, the Philippines, and Manifest Destiny" is the mainstay of the second part of the book, so the chapter on paranoid style is the mainstay of the first. It was delivered at Oxford as the Herbert Spencer Lecture, and as one of Professor Hofstadter's successors in this office the reviewer would like to praise it without reservation. Certainly there is much in it that is very appealing, particularly the historical analysis of the mind (if that is the right word) of the American pseudo-conservative. Hofstadter can rise to a splendidly sustained yet scholarly invective, and his historical knowledge leads him to such analogies as would have escaped ordinary mortals. Yet the psychologist may feel just a trifle unhappy at what is, in part at least, a psychological analysis. Much of what Hofstadter says is not really a matter for argument, debate, and theorizing; it should be a matter rather for experimental work by social psychologists. One does not feel that Hofstadter is too familiar with the empirical literature; he mentions the "authoritarian personality" in passing, but surely there is a good deal more in the storehouse of social psychology. There is the uneasy impression, possibly unjustified, that Hofstadter would feel quite offended if his ideas were actually put to an empirical test, and that like Freud he would reject the experimental approach to these questions. This leaves his comments as interesting and illuminating; their truth will have to be established by more empirically-minded investigators.

H. J. EYSENCK
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The Social Structure of Revolutionary America *by Jackson Turner Main. Princeton, Princeton University Press, 1965.—ix, 330 pp. $6.50.*

The class structure of revolutionary America, the distribution of income and property, the standards and styles of living characteristic of each class, the rate of horizontal and vertical mobility, the ways eighteenth-century Americans conceived of the social order, and the relationship between social and economic status and formal culture are the main topics examined in this frankly exploratory work. Based upon a prodigious, if

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necessarily highly selective, amount of research, it provides for most of these topics the first firm and systematically organized information as well as a series of tentative conclusions that will serve as interesting hypotheses for testing and debate.

The many regional and local variations in social organization within the colonies, the author finds, fall roughly into four major types, each of which represented a different stage of social development and was present to one degree or another in every colony during the Revolutionary era. The first, or frontier, type was characterized by economic equality, cheap and easily available land, an equal distribution of property, a high rate of vertical mobility, an inchoate class structure, and a population composed almost entirely of farmers. Farming continued to be the primary occupation in the second, or subsistence farm, type of society, but the social structure was at once more stable and more complex. Because there were few opportunities to acquire great wealth, there was no markedly wealthy class, and, although land was more difficult to come by and vertical mobility rates were somewhat lower than in a frontier society, the number of landless families was small and the typical resident was a small independent landowner who lived comfortably, if modestly. What distinguished the third, or commercial farm, type of society from the subsistence farm type was the accessibility of markets, the availability of capital, greater affluence, a larger wealthy class with a higher proportion of available property, a wider range of occupations, a still lower rate of vertical mobility, and a larger group of laborers and other propertyless types. In the fourth, or urban, type of society there was a still larger wealthy class with an even greater share of available property, a more numerous group of propertyless and a smaller middle class, still greater occupational diversity, and—because there was more economic opportunity—a higher rate of vertical mobility than in the commercial or subsistence farm type of societies.

The common denominators among these four types of societies—the essential features that, despite their differences, made them more similar to each other than to any segment of society in western Europe—were the relative absence of poverty, high rates of vertical mobility, great economic and social opportunity, and remarkable suppleness of the social fabric. Half the white population was middle class: small independent landowning farmers in rural areas and modestly successful shopkeepers, artisans, and clerks in the towns who owned property ranging in value from fifty pounds to five hundred pounds. Another fifth fell into an intermediate or upper-middle group and was composed of more substantial farmers, artisans, professional men, and merchants with possessions worth between five hundred and two thousand pounds. The largest landowners

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and the most successful merchants and professional men, those who had over two thousand pounds in personal and real property and who together possessed nearly half of the wealth of Revolutionary America, comprised another tenth. Thus, only about a fifth of the whites were dependent laborers without property, and at least half of those could look forward to acquiring property before they died. Indeed, vertical mobility from the lowest groups into the middle class, though it dropped off sharply in older settled areas, was phenomenal. Mobility from the middle classes into the upper was more restricted, but both commerce and the law provided ample opportunities for those who could take advantage of them. In accordance with traditional British social assumptions, farmers stood at the apex of the prestige order, but because that order corresponded closely to economic rank anyone with great wealth occupied a high position in the eyes of colonials with the result that there was a much higher proportion of merchants and lawyers elected to public office than their numbers warranted. Except for the Negro slaves who constituted about a third of the total population and who were consigned to perpetual bondage, the social picture was, then, extraordinarily bright. There was enough wealth, the author concludes, to save even the "poor from suffering, to permit the great majority to live adequately, even in comfort, and to enable a few to live in real luxury." The situation was made even more enviable by the "ease and rapidity with which the poor man could become economically independent, and the remarkable opportunity for the man of modest property to become rich." Thus did economic abundance and social fluidity combine "to minimize those conflicts which might have grown out of the class structure and the concentration of wealth."

As far as Revolutionary Americans were concerned, the author concludes, the only serious flaws in this picture were the "unequal distribution of property and class distinctions," both of which ran contrary to the American "vision of the Good Society" in which the ideal "was an economic equality in which invidious discriminations would be abolished." On this point, however, the author is not entirely convincing. An enormous amount of evidence could be adduced to show that colonial Americans from Jamestown through the Revolution were much more devoted to preserving their equal but unrestrained right to acquire as much property as they could than to either economic or social equality and that their vision of the "Good Society" was one in which their acquisitions as well as their liberty to make them would be eternally secure and where social equality in the sense of social leveling would perforce be impossible. As the author points out, they liked to think of their society as one with fewer inequalities than any in Europe and looked askance at all special legal, economic, social, and political rights and immunities—there

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were, after all, no legally privileged orders in America; it is equally true that the Revolution itself generated considerable discussion about equality, caused many Americans to examine the social ramifications of the term in ways they had never done before, and converted a few of them to the ideal of equality as social leveling. Though that ideal certainly gained strength in the nineteenth and twentieth centuries partly as a result of forces set in motion by the Revolution and has become an important article of American belief, it is doubtful that it ever at any point in American history achieved supremacy over the older ideal of the equal right of every individual to achieve the best life he can within the limits of his ability, means, and opportunities. Except under certain fortunate external conditions such as obtained in many places in America at one time or another between 1607 and 1900, these two ideals are fundamentally incompatible.

Though, of course, it is not entirely fair to criticize an author for not doing something he did not intend to do, it is nevertheless true that the fundamental weakness of this volume as an analysis of the social structure of Revolutionary America is its failure to examine thoroughly the social impact of the American Revolution. Essentially a still life, it makes no attempt to measure the amount or significance of social change and its relationship to the critical events between 1763 and 1789. In his conclusion, the author suggests that society was becoming more stratified through the middle decades of the eighteenth century and that the Revolution reversed this trend at least temporarily, but considerably more work will be required before either of these propositions will stand upon the same firm foundation as most of his other conclusions. In the meantime, all early American historians will be grateful to the author for going as far as he has in providing such an impressive array of data about so many facets of the social structure of Revolutionary America.

JACK P. GREENE
The Johns Hopkins University

Fisher Ames: Federalist and Statesman, 1758-1808 *by Winfred E. A. Bernhard. Chapel Hill, University of North Carolina Press for the Institute of Early American History and Culture, 1965.—ix, 372 pp. $8.75.*

Fisher Ames, Timothy Pickering, George Cabot: these names at once inspire a reflex series of responses, consisting mostly of epithets. But if Cabot was too rich and Pickering too crusty for sympathy, Ames (one

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seems to remember) was a somewhat tragic figure, his brilliance early dimmed by illness, his last years marred by pain and failure. The ideas, too, are familiar: "high" federalism, belief in a strong central government, rule by the elite, hatred of democracy, fear of the French Revolution, emphasis on stability and order.

These familiar interpretations are confirmed rather than challenged by Bernhard's solid biography. Essentially his book belongs to that respectable and useful species which is scholarly, reliable, and informative. Bernhard appears to have located every possible source concerning Ames' career, and even though relatively few personal letters survive he has been able to write three chapters on Ames' early life and to follow his private affairs reasonably well. He also supplies some interesting facts concerning his subject's economic activities. Most of the book, of course, discusses Ames as a politician.

Bernhard's task was made easier, and the importance of his biography perhaps reduced, by the limited scope of Ames' experience. He never left the country and only once did he travel south of the capital. He held no high executive or judicial office, no diplomatic post, and did not himself formulate policy; moreover, his career began in 1788 and ended, for all practical purposes, in 1795. Perhaps a "life and times" was therefore made impossible. Ames' importance derives from his political ideas together with his services in the Massachusetts ratifying convention and in Congress. Bernhard discusses these in detail, devoting about three-fifths of his pages to them. The focus is rather narrowly on Ames' personal reactions, his speeches being quoted or paraphrased at length. Fortunately Bernhard writes well enough—and Ames wrote well enough—so that the account is interesting. The presentation is fair to both sides.

The limitations of Bernhard's work grow out of a certain narrowness in scope. Ames' political theory is presented piecemeal, chronologically, instead of being developed and analyzed in a chapter; the book is descriptive rather than analytical. The reader's curiosity concerning the sources of Ames' ideas is not satisfied. More could have been done with the contrast between Fisher and his brother Nathaniel Ames. The excerpts from the latter's diary form an entertaining counterpoint in the footnotes, but we are never made to understand why the two developed so differently. Little attempt is made to explain Massachusetts politics, and, in general, background description is lacking. The reecnt books by David Fischer on federalism and by Paul Goodman on Massachusetts probably appeared too late for Bernhard to profit from them, but one nevertheless misses a certain breadth of view. Considered purely as biography, however, Bernhard deserves the prize which he received from the Institute of Early American History and Culture. The scholarship is excellent, footnotes are at the

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bottoms of pages, the bibliography is useful, the index is good, the style is readable, and there are few if any typographical or factual errors.

JACKSON T. MAIN
State University of New York, Stony Brook

The Poverty of Abundance: Hoover, the Nation, the Depression *by Albert U. Romasco. New York, Oxford University Press, 1965. —x, 282 pp. $6.00.*

Herbert Hoover's role in the Great Depression and the coming of the New Deal has long intrigued scholars. Reacting against the partisan Democratic charge that Hoover was responsible for the economic breakdown, many writers have accepted the thesis put forth by Walter Lippmann in the nineteen-thirties that Hoover was the originator of the New Deal. Few today would deny that Hoover established a vital precedent in employing presidential leadership in an attempt to control the business cycle, yet the thought of the dour "Engineer in Politics" ushering in the welfare state in America remains a profoundly disturbing idea.

Albert U. Romasco provides a highly satisfactory explanation of this seeming paradox in his incisive analysis of Hoover's response to the Great Depression. He portrays Hoover as pursuing a transitional policy, rejecting the *laissez-faire* approach of his predecessors in the White House but falling short of the active intervention in the economy that characterized the New Deal. Hoover did act, and he acted continuously, to halt the depression, and yet he only very reluctantly and belatedly permitted any direct federal involvement in the economy. As Romasco stresses, Hoover relied on the technique of voluntary cooperative action by private groups, ranging from trade associations and farm organizations to charities and labor unions, to fight the depression. The government's role was to serve as catalyst, bringing these groups together, providing them with information and expert advice, but always stopping short of direct involvement in the recovery effort. Hoover's formula to overcome the depression was bound to fail, Romasco argues, because even with the best will in the world, private cooperative effort could not cope with the paralysis of a complex industrial economy. But, more important, Hoover's valiant effort was indispensable, because the failure of voluntary activity convinced the American people that only unlimited use of federal power could overcome the poverty of abundance. In this negative sense, Hoover did prepare the way for the New Deal of Franklin D. Roosevelt.

Romasco has written an excellent book. He has a sound grasp of eco-

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nomic theory and the rare ability to write lucidly on such technical subjects as bank credit, deflationary spirals, and farm surpluses. By carefully reconstructing Hoover's depression policies, he has helped destroy the stereotype of Hoover as the embodiment of rugged individualism without making him the advance agent of the New Deal.

ROBERT A. DIVINE
University of Texas

In Search of Peace: The Senate Munitions Inquiry, 1934-36 *by John E. Wiltz. Baton Rouge, Louisiana State University Press, 1963.—xi, 277 pp. $6.50.*

In the mid-nineteen-thirties congressional committees probed businessmen with the same enthusiasm that twenty years later was devoted to seeking out communists. At present, conspiracy theories are not in vogue and the excesses of the investigators are a more popular topic among historians. Nevertheless, John E. Wiltz is scrupulously fair to all sides in this study of the special Senate committee which investigated the munitions industry in 1934-36.

Committee Chairman Gerald P. Nye announced before the investigation began that munitions makers and the bankers who financed their trade were the chief causes of recent wars; thereafter he implied periodically that his committee was turning up evidence to that effect. Wiltz finds, however, that in most respects Nye and his fellow committee members conducted a fair investigation; witnesses were treated courteously, the chairman took no important steps without the concurrence of all members, and official conclusions were warranted by the evidence. The committee admittedly failed to show that the munitions industry conspired to instigate war scares or armament races, although individual firms engaged in bribery, war propaganda, and almost everything else the committee suspected them of doing. The inquiry, Wiltz concludes, inadvertently helped dispel the "merchants of death" thesis it set out to establish.

Perhaps Wiltz underrates the effects of the committee's work. Nye may not have proven that munitions makers bore responsibility for wars, but a great many Americans—possibly misled by sensational reporting—seemed to think he had made a good case. The author relies heavily upon the New York Times in assessing popular response, although in his bibliography and occasionally in his footnotes he refers to newspapers throughout the country..

Moreover, the relationship among the munitions makers, the bankers, and American entrance into World War I remains unclear. Although

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some historians have expressed suspicion, none has proved that there was collusion during 1914-17 among British officials, Morgan representatives, and presidential advisers like Robert Lansing and Edward House to bring the United States to the aid of the Allies. Chapter 9 of Wiltz's book, "Neutrality and Morgan, 1936," is a puzzling combination of suggestions that the Morgan firm pressed the government toward war, and denials that evidence of such pressure exists. For example, in discussing committee hearings on the British exchange crisis of 1913, which ended with a change in the regulations hitherto forbidding the purchase of Allied securities by American investors, Wiltz declares: "It was possible that the British and Morgan had created the crisis to force a change in American policy . . . but evidence proved inconclusive and the Morgan partners denied conspiracy." However, Wiltz quotes the committee's exceptionally able chief investigator, Stephen Rauschenbush, on J. P. Morgan and Company: "Confidentially we think that they have cleaned out their files and have lied to us at length." Finally, of course, President Wilson had to decide whether the United States should go to war in 1917 or remain at peace despite German submarine warfare. The question remains, To what extent was he guided toward this decision, and why? Wiltz chooses not to offer his opinion.

The author's research is thorough in so far as it concerns the committee's activities. His four-page bibliographical essay is especially well written and valuable, but even here he reveals a reluctance to evaluate the meaning of his evidence. He states: "There were interviews with Senator Nye, Senator Pope and Stephen Rauschenbush. On important issues the procedure was to address the same questions to all three men. When answers matched I accepted them." This seems an odd procedure; there were facts that only Chief Investigator Rauschenbush knew, Senator Pope worked to kill the inquiry, and Nye showed erratic judgment and had a disposition to forgive and forget.

STANLEY COBEN
Princeton University

The United States and Latin American Wars, 1932-1942 *by Bryce Wood. New York and London, Columbia University Press, 1966. —x, 519 pp. $11.00.*

This is the second scholarly volume published by Dr. Wood within half a decade. The first, *The Making of the Good Neighbor Policy*, was published by Columbia University Press in 1961 and greeted with high praise by experts in the field of inter-American relations. In the opinion of this re-

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viewer, the volume now under inspection deserves a similar reception. In fact, it is a somewhat larger work than the first and probably required more extensive research. If its perusal requires intensive concentration and hard effort, the nature of the subject and not the author should be criticized, for he has merely exhibited a determination to explore every phase of the three little Latin American wars that occurred during the decade indicated in the title of this volume: the Chaco war between Bolivia and Paraguay; the Leticia dispute involving Peru and Colombia; and the Marañón conflict between Peru and Ecuador. If pressed to mention some defect, I would contend that his seventeen pages of introduction are slightly inadequate in concrete details and illustrations, probably because Dr. Wood failed to accord careful consideration to J. Lloyd Mecham's *The United States and Inter-American Security, 1889-1960* (Austin, 1960). I offer two illustrations.

"Of the approximately thirty boundaries demarcating the Latin American states, disputes over about twenty of them survived into the twentieth century. By 1942, however, nearly all controversies had been terminated . . ." (p. 3). Should not more details have been presented at this point? "In no comparable period in the century following 1830 were there so many conflicts between states in the Americas as in the fourteen years between 1928 and 1942" (p. 14). Should not these have been enumerated and briefly described?

Excepting this introductory chapter and the two final chapters, the book is thoroughly annotated. The bibliography and footnotes, the latter consisting largely of citations to primary sources, cover 108 pages! Only a few important secondary works are missing. The four maps that follow are excellent. The index is accurate and extensive, though not quite exhaustive.

The narrative is both factual and thoughtful. I might add that it is also sometimes a bit dull if I felt more confident of my ability to point out in detail the modification required to make it more interesting. Only high-powered specialists in diplomacy can read such works with sustained enthusiasm. Others less gifted in this respect will find them most useful for convenient reference. But all should be delighted that they have a colleague such as Bryce Wood to undertake to uncover the facts, classify them, and use them as foundation for his comments and conclusions.

J. FRED RIPPY
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The Garden and the Wilderness: Religion and Government in American Constitutional History *by Mark De Wolfe Howe. Chicago and London, University of Chicago Press, 1965.—ix, 180 pp. $4.50.*

This volume constitutes the text of a series of lectures given by Professor Howe at the Hebrew Union College-Jewish Institute of Religion under the sponsorship of the Frank L. Weil Institute for Studies in Religion and the Humanities. The structure of the treatment of the subject, identified by the subtitle, is basically, though roughly, chronological, each chapter concerning itself with a particular time period in the development of the interpretation and application of the religion clause of the First Amendment.

The first chapter deals with the period up to and including the framing of the Constitution and the First Amendment; the second traces disestablishment in the states and its effects upon intra-church disputes during the first half of the nineteenth century; the third with the Civil War and its effect upon church schisms; the fourth with the adoption of the Fourteenth Amendment and its incorporation of the restrictions of the First; the fifth deals with the period of the nineteen-forties and fifties and the interaction of race, religion, and education, and the last deals with the Court's latest decisions, principally the Bible-reading and Sabbatarian decisions.

Anger, the Book of Proverbs should say if it does not, blinds the eye of the wise. Professor Howe is very wise, and his book presents many sagacious comments and fresh insights. But he is also very angry at the Supreme Court—so angry that he charges it with "distorting" and "manipulating" history and "dishonoring the arts of the historian and degrading the talents of the lawyer." His anger results in some inaccuracies in history (for example, that Jefferson's famous letter to the Danbury Baptists could "be read as an ingratiating effort to echo a Baptist orthodoxy"—whereas, in fact, the substance of the letter had been long written and awaited an occasion to be used), and in the reading of cases (for example, the statement that the Court's opinion in the Russian Orthodox Case "said nothing of disestablishment or separation," whereas it said that the transfer of control over the church "violates our rule of separation between church and state").

Errors such as these are inevitable, even in a thin volume, and would be of minor significance if the author did not assail the Court as dishonest historian and bad lawyer. One anger-induced instance of blindness, however, is far more serious, for it goes to the heart of Howe's thesis. This is that the Court misinterpreted the establishment clause as being based upon Jefferson's anticlericalism rather than upon the philosophy of Roger Wil-

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liams (from whom the title of the book is taken) that the purpose of separation is to protect the church from the state and that it therefore does not outlaw those aids to religion which do not affect religious liberties. The result of the historical error, says Howe, is indicated most clearly in the Sunday Law cases, where the Court upheld the statutes as secular laws intended to assure rest and relaxation. Had the Court recognized that the First Amendment was based upon Roger Williams' friendliness to religion rather than Jefferson's hostility, it would not have found it necessary to resort to the fictional justification and would have upheld the law as an aid to religion which does not infringe upon religious liberties.

The following is an extract from the journal of Governor Winthrop of Massachusetts Bay in 1631: "At a court holden at Boston . . . a letter was written from that court to Mr. Endicott to this effect: That . . . Mr. Williams . . . had disclosed his opinion that the magistrate might not punish the breach of the Sabbath . . . as it was a breach of the first table."

In truth, it was not fear and distrust alone that motivated Williams and Jefferson but, no less, a conviction that the state had no business with religion because of the law of the Two Tables (Williams) or the social contract (Jefferson).

LEO PFEFFER
Long Island University

The De-Romanization of the American Catholic Church *by Edward Wakin and Father Joseph F. Scheuer. New York, Macmillan and London, Collier-Macmillan, 1966.—318 pp. $6.95.*

Mr. Daniel Callahan of *The Commonweal* recently wrote that "in the past, it was the non-Catholic who cast a critical eye on the Church. Now it should be the Catholic himself who does so—not for the sake of the status quo, or for the sake of reform, but simply in order to insure that the truth is being sought without fear." Certainly there is nothing timorous in this book by a Catholic layman and a priest, both on the faculty of Fordham University. Indeed, if the authors are guilty of moral weakness, it is their unrestrained desire to be startling. They rely on the journalist's technique of beginning each chapter with a "telling" anecdote, factual or fictional, about the contemporary Church: the abbot trying to decide whether to allow his charges to break the traditional Great Silence in order to listen to Perry Como's evening Christmas program; the farewell "shower" given

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Susan before she leaves to become a "bride of Christ"; the young couple receiving matrimonial instructions from the celibate priest. The authors move from such anecdotes to diagnosis and occasional prophecy via cursory, and not wholly accurate, sketches of the "historical background." And they have a predilection for the shocking statement: for example, that "the Newman movement is an exercise in tokenism," or that "the demands of enclosure within community life suffocate the typical nun," or that in the past "the Catholic intellectual in his native habitat . . . had an aura of emasculation about him."

But though the rhetoric is sometimes flip and the argumentation sometimes facile, the authors are serious men, well informed about the contemporary Catholic scene, and convinced that its contradictions can be illuminated by modern social scientific analysis. In their introduction, they promise to rely heavily on "Parsonian theory, Weberian analysis, psychological forms, and political trends of thought," but their central explanatory device is that favorite dualism of nineteenth-century liberalism: the dichotomy between Roman or Latin characteristics, on the one hand, and Anglo-Saxon or American traits, on the other. Thus a "closed" system is contrasted to an "open" system, monarchy and papal primacy to democracy and collegiality, authority to freedom, privilege to egalitarianism, corporate to personal responsibility, other-worldliness to this-worldliness. The "ethnic accent" which the authors rightly discern in the early years of the American Church they equate pretty completely with "Roman" characteristics, which, they argue, though perhaps suitable for other countries and other times, constitute a "cultural straitjacket" to the free action of the Holy Spirit in this country at this time. Hence their pleasure at detecting signs in the American Church that "de-Romanization" is taking place.

The authors do not, however, make very clear *how* the American experience is effecting this change. Nor are they clear how *far* they want Americanization to go. The uninterest most Catholics show for civil rights for Negroes seems to the authors a distressing Americanism; so does the flatulent organizationalism and boosterism of the Knights of Columbus. Obviously the authors hope for a sophisticated kind of acculturation, in which the transient or cultural aspects of the "Roman" Church are abandoned, and the permanent truths of "Catholicism" are retained; but they provide no model to define the process. The authors' conclusion is that in twenty-five years the Church in America will be unrecognizable. Of course that may be so. But the reader cannot help feeling disappointed that an essay in social science concludes so agnostically.

ROBERT D. CROSS
Columbia University

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The Formative Years of Social Security *by Arthur J. Altmeyer. Madison, Milwaukee, and London, University of Wisconsin Press, 1966.—xi, 314 pp. $6.50, 50s.*

All students of social policy and of public administration will welcome this book by the man who, as a member of the original Social Security Board and subsequently its chairman and commissioner for social security until 1954, exerted a profound influence on the nature of the program and the quality of its administration. His account of the origin and staffing of the new administration, of the vital policy decisions that were called for in implementing the new legislation, and of the many legislative changes that were proposed or adopted reveals how fortunate the nation was that during its formative years this important program was under the leadership of a man of such probity, courage, and absolute devotion to its basic social purposes.

In his final chapter Altmeyer frankly admits what he now regards as some of his earlier policy mistakes. He now believes that the Board in 1939 could have pressed for and probably have achieved federal benefit standards in unemployment insurance, and that it was a mistake not to have provided for employe contributions in the 1935 Act. His account of the controversies about unemployment insurance in 1934 and previously, however, contains one surprising error. He states (p. 24) that "all of the leading advocates of federal action on unemployment insurance . . . were in agreement in favoring some form of experience-rating." In fact, the desirability of experience-rating was the major issue dividing proponents of unemployment insurance in the early nineteen-thirties, with the experts of the day identified with either the American Association for Social Security and the so-called Ohio Plan, which opposed experience-rating, or the American Association for Labor Legislation and the Wisconsin Plan, which favored it. Indeed, much of the struggle within the Committee on Economic Security in 1934 turned around the question of which type of program, federal or federal-state, and if the latter, a tax-offset or a grant-in-aid variety, would be most likely to encourage or permit the states to adopt experience-rating.

Altmeyer also regrets the Board's failure to recommend the removal of the dollar limit to taxable earnings and, with perhaps more justification, the immediate inclusion of permanent total disability payments in 1939, and states bluntly that "our greatest mistakes lay in the decisions we made, or failed to make, concerning protection against the cost of medical care" (p. 261). On public assistance, he argues that if the Board had not insisted on basing payments on individual need, the spread of an income-conditioned pension might well have prevented OASI from ever coming

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into operation. This seems debatable in view of the relatively few states then interested in developing a pension type of old age assistance and the low levels of the then proposed payments. And Altmeyer does not list among the "mistakes" of the Board, as many would, its insistence on highly detailed determination and verification of need, a policy that the present Commissioner of Welfare is now urging the states to abandon or at least modify. On the other hand, on the issue of variable grants-in-aid, the Board's recommendations have been fully justified by subsequent developments, and it is unfortunate that they encountered strong opposition from President Roosevelt. One of the more interesting facts to emerge from Altmeyer's account of the early years, is, indeed, the tremendous influence on various aspects of the social security program exerted by President Roosevelt.

And yet in some respects, despite its intrinsic interest, the book is disappointing. Altmeyer states that his purpose is "to shed some light on the considerations and personalities involved in the making of the important policy decisions, concerning not only legislation but also administration" (p. v). In his account of his dealings with the Congress he does indeed name names and speak frankly and specifically. But for one who, as a student of J. R. Commons, believes that administration is legislation in action and that much of what is termed "administration" is in fact policy formation, it is curious to find him so reticent about his important lieutenants. Probably his greatest achievement was his ability to attract into the administration a group of men and women of outstanding ability, integrity, and complete devotion to the program. It is thus all the more surprising that Altmeyer does not see fit to name any of them. It is astonishing, for example, that a book which purports to give an inside view of the development of the social security system would nowhere mention the name, or discuss the role, of Wilbur Cohen, the man whose knowledge of the technical problems, fertility of imagination, and skill in working with congressional committees have made him one of the most influential personalities in shaping legislation. Nor is any mention made of the personality and influence of Jane Hoey and her staff, primarily of social workers, on the emergent public assistance programs, or of the influence of Robert Ball on the OASDI program. Similarly, Robert J. Myers, the Board's actuary, whose reputation for probity and professional competence has given him a unique and influential relationship with the Ways and Means Committee, receives no mention.

It is understandable that Altmeyer should have concentrated major attention on the internal work of the administration and its relationships with the Congress and the President. But it could be wished that some recognition had been given to other groups and individuals whose work

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contributed to the development of the program. The important role of the American Public Welfare Association is not touched upon and references to organized labor are sparse. No mention is made, for example, of Barbara Armstrong, whose role in the development of the old age insurance system in 1934 was crucial, while Douglas Brown, whose writings, testimony, and service as chairman of important advisory committees contributed greatly to the acceptance of the social insurance idea, receives mention only as the author of a book review. Curiously, Altmeyer seems always to be more informative about the backgrounds and personalities of those who opposed or disagreed with him than of those who were on his side.

EVELINE M. BURNS
Columbia University School of Social Work

Hoffa and the Teamsters: A Study of Union Power *by Ralph C. James and Estelle Dinerstein James. Princeton, D. Van Nostrand, 1965.—xvii, 430 pp. $6.95.*

Trade unions have never been openhanded—any more than business enterprises—about their market-place tactics and internal operations. No American labor leader would seem less likely to reveal his uses of power than James R. Hoffa of the Teamsters. Yet, as a result of an appearance at MIT in March 1961, Hoffa granted to Ralph and Estelle James full access to himself and his union. Over a two-year period, the two labor economists interviewed Hoffa and other officials intensively, sat in on confidential meetings and bargaining sessions, and pored over union records. The result is a shrewd and lively book that tells us more than we had any reason to expect to know at this time about Jimmy Hoffa and his methods. The book has its faults, partly because of the curious combination of memoir and scholarly study and partly because of the thin treatment of the historical background and Hoffa's early career. But from the point where he becomes the dominant figure in the Central States Drivers Council, we receive a superb analysis of Hoffa's effectiveness as labor leader, organizer, and negotiator.

Part of his success, as the Jameses show astutely, derives from the strategic situation of the Teamsters. Once the organization of the over-the-road drivers commenced in the nineteen-thirties, the union could capitalize mightily on the interrelated character of the trucking industry. The essential tactic—"leverage," the authors call it—was to apply pressure indirectly from union strongpoints on employers not immediately susceptible to union power. But, equally important, Hoffa exploited the strategic advantages to an extraordinary extent. The Jameses suggest that no other Teamsters' leader measured up to Hoffa in this respect. His skill grew

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increasingly valuable as, beginning with the Taft-Hartley Act, the law circumscribed ever more stringently the use of secondary-boycott tactics. Hoffa responded imaginatively and energetically with the "hot cargo" clause (until that too was nullified by the Landrum-Griffin Act), uniform contract expiration dates, friendly relations with key employers, tertiary pressures, and the "open-end" grievance procedure. Not only has Hoffa known how to secure economic power, but he has known what to do with it. Above all, following the lead of the Trotskyite Farrell Dobbs (whose influence on Hoffa emerges as a major irony in this book), Hoffa worked persistently for national collective bargaining, and finally achieved it in 1964. That is a development of the first magnitude in the chaotic trucking industry.

However it may seem to the general public, the efficient application of economic force is not at all reprehensible from a trade-union standpoint and, indeed, adheres precisely to the doctrines laid down by Samuel Gompers. But what of the man Hoffa? Is he somehow different and more dangerous than respectable labor leaders, as his legal troubles and the AFL-CIO expulsion would indicate? The touchstone perhaps resides in his unique handling of the Central and Southern States Pension Fund, to which the Jameses devote a third of the book. From the start in 1955, Hoffa forced through an administrative plan that in effect gave him control over the millions of dollars flowing into the Fund every month. Then he began to invest in real estate and other speculative ventures (including gambling houses) while charging interest at rates much below the market for such high-risk loans. Finally, generous pensions are being paid out presently, with little likelihood that the level can be maintained and probably at the expense of adequate pensions in the future. What is the logic behind this dubious behavior, so different from the conservative practices of other pension funds? The Jameses conclude that, like everything else, the pension fund is being used in the single-minded pursuit of greater power. "Hoffa proudly claims that the huge resources of the CSPF have been dispersed with the intent of winning powerful friends. This objective dictated . . . the terms and apportionment of loans to cooperative employers, union associates, and public relations men" (p. 283). Although they consider and reject other explanations, the Jameses do not make an entirely persuasive case; they admit that the benefits to be derived from some of the largest loans are "enigmatic" (p. 284). But if they are correct that he is sacrificing his members' welfare, then Hoffa has indeed moved beyond the pale of bona fide union leadership. The pursuit of power has become the end, not the means.

DAVID BRODY
Ohio State University

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Negro Political Leadership in the South *by Everett Carl Ladd Jr. Ithaca, Cornell University Press, 1966.—x, 348 pp. $7.50.*

This excellent study of Negro leadership sees it as a response to particular societal situations. The past situation is compared to the present, and a city in the "rim South" (Winston-Salem, North Carolina) is compared to a city in the "deep South" (Greenville, South Carolina). Systematic interviews were conducted with all present-day leaders, comparative South-wide data and direct observation are skillfully integrated, and the relevant literature is carefully combed.

Whereas two decades ago Negro leadership was either of the "Uncle Tom" begging variety or of the usually unachieving "protest" variety, today there are three distinct types. The "conservative" leaders are established older men who have primarily welfare goals for the Negro people; the "militant" leaders are mainly younger men, often with low incomes, with uncompromising "status" goals for Negroes; the "moderate" leaders are of all ages who balance welfare and status goals. Most leaders in all three groups have a college education, and have incomes not dependent on the white community. The conservatives are likely to be businessmen; the other two groups, professionals. Where the whites are flexible in accommodating Negro demands, as in Winston-Salem, the moderates are the most effective and popular leaders; where the whites still maintain the rigid biracial (caste) system, the militants are the only ones to achieve anything and to have strong Negro support. The conservatives tend to operate behind the scenes, and while they are often effective in getting welfare benefits for Negroes, they are not popular. Conservatives also dominate the boards of welfare organizations; militants control the protest organizations; moderates are in both welfare and protest organizations but are increasingly to be found also in the political organizations.

Negro leadership has been and remains issue leadership, and the one issue that matters is race advancement, both in terms of welfare and of status. As the white community becomes more permissive toward Negroes, the kind of Negro leadership called forth by the situation changes, and the leaders themselves turn over or change their orientation. New leaders frequently supplant the old, not because of organizational skills or personal attractiveness, but because of what Negroes will tolerate and what whites are affected by.

The Negro community has many organizations, although except for the churches their membership may not be large or highly participant. There are three types of voting organizations: those working to register Negroes, those working to organize and commit an existing electorate in behalf of race objectives, those working in the established political parties to commit

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the Negro as one of their constituent interest groups. The last mentioned are recently developing only in those parts of the South with relatively permissive race relations. The author recognizes the continuing importance of the clergy and of welfare organization leaders, and discusses the cleavages and antagonisms among Negro organizations. Despite the cleavages, and despite the ignorance of most Southern Negroes, the Negro vote is remarkably cohesive. The Negro vote now is quite helpful in winning elections in the rim-South; while some whites are alienated from a candidate who appears for a cohesive Negro vote, others are now willing to recognize limited Negro demands. Where the latter prevails, and Negroes are no longer completely excluded from the benefits and participations of the general community, Southern life is taking on the characteristics of Northern life, even in its problems (such as *de facto* segregation) and its politics.

This inadequate summary of an insightful book is enough to indicate that the title is not comprehensive enough; the leadership analyzed is far broader than the political. The one important error in the book is to call Martin Luther King a "militant"; this may be true in the South, but in the North he is a "moderate." There is frequent reference to *An American Dilemma* for description of earlier Negro leadership, and the appreciation of Gunnar Myrdal is well deserved, but there ought to be acknowledgment of the existence of the co-authors of that work, Richard Sterner and Arnold Rose.

The superiority of Ladd's analysis can be contrasted with the weakness of another recent book on Southern Negro leadership, that by M. Elaine Burgess. The latter follows Floyd Hunter in seeing Negro community leaders primarily as members of the economic elite, whereas Ladd shows that businessmen fall primarily into one type, the conservative, if indeed they are leaders at all. Thus, the present book is needed as a corrective and as an analysis of power in a rapidly changing South.

ARNOLD M. ROSE
University of Minnesota

Obstacles to Change in Latin America *edited by Claudio Veliz. London, New York, and Toronto, Oxford University Press, under the auspices of the Royal Institute of International Affairs, 1965.—viii, 263 pp. $6.75.*

Excessive stability, the product of traditional values, outmoded institutions, and incomplete industrialization was the theme on which eleven leading Latin American scholars reached consensus in a conference held last year at Chatham House, England. Their papers, reprinted here with

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an introduction by Claudio Veliz, are divided equally between general topics and country studies on Chile, Brazil, Colombia, and Mexico. To their recognized academic achievements the contributors have brought substantial experience in government and international organizations. The result is an important analysis by Latin Americans of an area well known for relative backwardness, if not stagnation.

Change as measured by urbanization and industrial growth came rapidly after World War I without, however, producing the expected impact or results. That the rate of development is unsatisfactory today is partly explained by the fact that import substitutions and balance of payments problems, the classic causes for light industrial expansion since 1930, are less effective for stimulating sustained investment in consumer durables and capital goods. Also, the pre-industrial society of traditional elite groups and bureaucrats onto which the new industrial parks were superimposed has not risen to the challenge of modernization. Fundamentally, Latin American politics and society have not thus far produced leadership for the broad developmental policies which these authors, with their predominantly ECLA backgrounds, would favor.

Who shall govern? is therefore a key question to ask of the contributors. Committed as they are to democratic planning, they show little faith in the conservative modernizer. The capacity for traditional political elites to manage change in alliance with the new industrial middle class is largely discounted. Populism, on the other hand, is a force for change. But while the emergence of a large urban electorate and rural social movements in Colombia and Brazil are important political developments, the tendency for populist leaders to seek satisfaction of momentary wants may benefit the revolutionary rather than the reformer.

Almost by default, the middle classes remain the prime source of potential reformist leadership. Because aristocratic tradition is alluring to industrialists, middle sector management, and bureaucrats, some authors believe the middle classes are incapable of fundamentally changing inadequate institutions. Others, however, point to the as yet untapped political energies of the so-called technocratic bourgeoisie and stress the possible positive effects of diminished cold war tensions on the middle groups. Despite these differences, there is general agreement that, unlike their European predecessors, the Latin American middle classes have neither sparked industrialization nor developed an industrial culture.

Thus Latin Americans will have to look inward for the sources of modernization; they cannot seek comfort in Western European models. Whether development will occur through nationalism or regional cooperation, as for example the Latin American Free Trade Association, is an open point. Can democratic values be maintained and created in economies

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of scarcity and enormous population growth? The consensus is yes. But time, as this important book makes clear, is running out.

JOHN D. WIRTH
Stanford University

Nationalism in Iran *by Richard W. Cottam. Pittsburgh, University of Pittsburgh Press, 1964.—ix, 332 pp. $6.00.*

Professor Cottam has written a book that is far broader in scope than might be supposed from its title. It is the best existing guide to the political history of Iran in the twentieth century, and is particularly to be commended for its coverage of the controversial events that have taken place in that country since World War II. For these last two decades most U. S. press coverage of Iranian developments, including that of the New York *Times*, has read like publicity handouts of the Shah, and Americans have been presented with a mythical and highly propagandistic version of events and personalities in Iran. Mr. Cottam's presentation of the factors behind the rise and tremendous popularity of Mosaddeq, and his critical attitude toward the present regime, are thus to be welcomed not only in themselves but as a useful corrective to the distorted picture available in most American sources. Mr. Cottam's attitudes on the events of the postwar years are widely shared among U. S. scholars of Iran, but this is the first time they have been so well presented in a book that is both scholarly and readable.

The author is especially good in his coverage of the Mosaddeq period. Mosaddeq emerges from this study a very different man from the hysterical extremist who graced the U. S. press. Instead he is shown as an intelligent liberal nationalist whose personal honesty and devotion to ideals help account for his overwhelming popularity with Iranians. His faults are seen as those of miscalculation—miscalculated hopes that he might expect U. S. aid; miscalculated faith that liberal democracy would be realizable in a country where illiteracy, superstition, and landlord and clerical control of the voters were endemic; and (more doubtfully) miscalculated intransigence on the oil question, even in the face of British concessions. Cottam also disposes of the myth that Mosaddeq and his supporters were in close league with the Communists.

Like most American scholars of Iran, Cottam is quite critical of U. S. policy in opposing and helping to overthrow Mosaddeq and subsequently giving heavy aid to the dictatorial regime of the Shah. Cottam appears to view this policy as a mistake based in large measure on misinformation, but the consistent pattern of such mistakes all over the world would make

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it seem rather to be a normal projection of U. S. foreign policy. That this policy is mistaken in that it is likely to lead ultimately to a government far more radical and anti-American than that of the liberal nationalist Mosaddeq is, of course, true.

In addition to its pioneering coverage of the past twenty years, Cottam's book has many other points to recommend it. Organized into topical chapters, it provides illuminating information and analysis on such topics as the tribes, social classes, regional feelings, religious nationalism, and the relations of Iranian nationalism to Iran's experience with imperialism. These chapters, taken together, give a coverage of the history of Iran since 1890 that is not to be found elsewhere in English in a single volume. One may, however, question whether the topical organization chosen by the author was the most felicitous one, since it involves jumping backward and forward in time and also a certain repetitiousness.

It should be noted that if Cottam's book is much broader than its title indicates, in another way it does not quite fully cover the subject of the title, nationalism in Iran. There is no thorough coverage of the intellectual aspect of the question, which would involve treatment of the cultural and religious roots of Iranian self-identification and a close analysis of the thought of at least some leading nationalists. All this is but to say that there is room for considerable further work on Iranian nationalism. The kind of intellectual history suggested would probably involve, at a minimum, a whole separate book.

With all its virtues, it is too bad that Cottam's book shares a fault with many others on Iran—frequent inaccuracies and inconsistencies in transliteration. Surely the days of "Nasr al-Din Shah" should be over by now.

NIKKI R. KEDDIE
University of California, Los Angeles

West-African Urbanization: A Study of Voluntary Associations in Social Change *by Kenneth Little. Cambridge, Cambridge University Press, 1965.—vii, 179 pp. $6.50.*

Kenneth Little has been for some time one of the leaders in the study of the role of voluntary associations in modern social change. By an accident of intellectual history, this subject has probably been studied more extensively in West Africa than in any area other than the United States. This book is an excellent summary of all the work that has been done in this field. It describes admirably the range of functions that voluntary associations have played during (and since) the colonial period in West Africa, particularly the areas formerly under British rule.

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Little suggests in his introduction that his primary objective is not mere description, still less to write a history, but "to provide a model which may be useful to students of social change" (p. 3). He also states clearly as a presupposition of his analysis that: "it is the interaction of the actors—the institutions created by the incoming industrial economy —rather than the cultural components that we have to dissect." I find this a most useful beginning-point, and Little in fact conducts his analysis in the way he promises.

He explores the large number of very disparate empirical studies that have been done, and suggests a whole series of specific hypotheses. He ends by asserting that the model of the "adaptive and integrative" functions of voluntary associations may be a "heuristic device" for tracing the implications of modernization for the relation of the individual to society.

Thus, he implies we are on a hot theoretical trail which should be followed up. We may well be. I would hope, however, that before much more theoretical work is done using this "heuristic device," we now perform some systematic empirical tests of the hypotheses put forward. The evidence so far is a series of specific studies, each on a different aspect in a different place. Little's model fits most of the data. But do all his types of voluntary associations appear in all countries (of West Africa, for a start), and if not, why not? What is the impact of different types of nationalist movements on the growth of these structures? Of different ethnic ratios? Of different forms of economic organization? We need some systematic evidence of the types of variance in the model, from which we might deduce verifiable causal statements. Previously the very outline of what had occurred was obscure. But the publication of this book makes clear how much accord there is among the researchers on the "adaptive and integrative" functions of these groups. The possibility of careful comparative study is now there and Little has made his contribution in setting the scene for this next stage.

IMMANUEL WALLERSTEIN
Columbia University

Religion and Progress in Modern Asia *edited by Robert N. Bellah. New York, The Free Press and London, Collier-Macmillan, 1965. —xxv, 246 pp. $6.95.*

This worthwhile book presents papers originally given at a conference held in Manila in June 1963 on "Cultural Motivations to Progress in South and Southeast Asia," together with an introduction, epilogue, and high-

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lights selected from the conference discussion by the editor. It raises and discusses fundamental problems involved in the efforts of the elites of non-Western societies to bring modernization to their countries. The relationship of transition to tradition; the consequent problems of conflict and accommodations; the identity crisis of those in transition; the problems of motivation and meaning—all these are taken up and considered with both theoretical sophistication and down-to-earth empirical reference to concrete problems in specific societies. The questions are raised and explored from the point of view of the place of religion in modernization and its relation to the processes of transition. In the words of Soedjatmoko, in a fascinating paper which largely defined the basic tasks of the conference, "for each of the religions of our societies, the problem is to relate itself to the great and pressing revolution of our time—the effort to abolish poverty, ignorance, and indignity; the striving for a better life on earth; the emergence of a new social structure; and the continuous presence of change."

The participants at this conference were aware not only of the way in which tradition and its embodiment in established social structures create obstacles to change, but more significantly, perhaps, the way the traditional religions contain elements which can harmonize with, and even encourage modernization. For example, S. C. Dube of the Indian National Institute of Community Development, concludes that India's "basic value system has several elements that could encourage and stimulate economic growth but her structural inadequacies stand in the way of modernization and development." Moreover, Asians are seen taking a larger view resonant with the interests of those in the West concerned with the human problems of advanced technology. Ediweera R. Sarachandra of Ceylon speaks of those involved in "the quest for a set of values that will place human relations on more satisfying footings and thus establish a pattern of living more consonant with the wider awareness of human motives that modern knowledge has given people."

There is a general awareness that such cultural problems of change are not frozen, not fixated in form or content, and that people learn in their day-to-day experience, that the process of development itself is a learning process which changes values and creates new ones. The finding by Yusif A. Sayigh of the American University of Beirut in this respect coincides with my own conclusions in an unpublished study of social change done in the Arabian Peninsula in 1963. He states: "Where the benefits are observable or demonstrable, people undergo the subtle transformation in views and values readily—entrepreneurs, managers, technicians, and laborers alike."

This book is to be recommended to students of both social change and

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religion. It points up the importance at the present time of bringing together the great knowledge accumulated by Asian cultural specialists and the insights and methods of the social scientists, despite all the vested academic interests which stand in the way. Again in the words of Soedjatmoko: "The study of the social sciences as well as of Orientology, for instance, will have to free itself from the preoccupations of its disciplines and to direct its attention and energy much more deliberately and especially much more imaginatively to those great problems of our nations."

THOMAS F. O'DEA
Columbia University

Vietnam: Between Two Truces *by Jean Lacouture. Introduction by Joseph Kraft, translated from the French by Konrad Kellen and Joel Carmichael. New York, Random House, 1966.—xv, 295 pp. $5.95.*

This review of the major events in South Vietnam since the 1954 Geneva settlement provides new insights into the war in Vietnam. Lacouture, a journalist with twenty years of experience in Indochina, dispells a persistent United States myth—that the turmoil in South Vietnam is a synthetic product, adroitly fomented by the North Vietnamese, rather than deeply felt and generated by the South Vietnamese. According to this myth, only North Vietnamese are truly revolutionary and capable of playing leadership roles. In actual fact, Vietnam's southern revolutionaries are if anything more militant than their northern brothers. The compromise forced on Ho Chi Minh at Geneva—the temporary partition of Vietnam which the United States extended indefinitely—has been far harder on the southern revolutionaries whom the Diem regime set about to annihilate than on the northern revolutionaries who, at least until recently, were primarily engaged in building socialism in half a country.

Lacouture, like Chaffard and Devillers, other noted authorities on Vietnam, believes that Diem dug his own grave and that the revolutionary pressures in the South developed to the point where the North was induced to give limited support to the National Liberation Front. According to Lacouture, it was the very success of the National Liberation Front in South Vietnam that drove the United States—unwilling to face political realities and accord South Vietnamese leftists their due share in the affairs of South Vietnam—to escalate the war to North Vietnam even at the risk of precipitating a war with China. He criticizes the United States for indulging in the strategy of brinkmanship and imperiling world peace

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in order to avoid a local defeat in South Vietnam, where the United States has operated in defiance of the Geneva settlement of 1954 (p. 273).

Lacouture is free of American stereotyped thinking which reduces everything to black and white and everyone to Red or anti-Red. He depicts real Vietnamese personalities, the subtle complexities of the North/South relationship and of the Buddhist protest movement. He even discovers shades of difference between the various puppet regimes in South Vietnam since 1954! The book is a plea to save Vietnam from being bombed into the Stone Age and used as a staging area for a United States-Chinese confrontation, the fate to which the United States seems to have assigned that martyred country. Lacouture reminds the globalists that peace in South Vietnam can only be made by the contending factions in South Vietnam—not by northerners, nor Americans, nor Chinese. Likewise, the relations between North and South can be resolved only by the North and South Vietnamese. Cooperation among the great powers *can* help to stabilize the situation if cooperation takes the form of a non-intervention pact.

HELEN B. LAMB
New York City

British Policy in India, 1858-1905 *by Sarvepalli Gopal. Cambridge, Cambridge University Press, 1965.—xii, 423 pp. $13.50.*

Dr. Gopal has written a scholarly and important study which should find a place in the library of every student of modern Indian history. The work is based squarely on the private papers of the viceroys and related official documents. It is on the whole gracefully written and sparkles with happy phrases. In this book, as previously, Dr. Gopal has raised the standards of South Asian historiography. He deserves the gratitude of all who labor in the vineyard.

Each triumph, however, gives rise to new problems. And if Dr. Gopal has been instrumental in leading the way up from sloppy and emotional writing, his very pioneering success enables the reader to ask a hard question: "Is viceregal history an adequate discussion of British policy?" For at bottom this book is viceregal history. The traditional division by reigns is retained although some are grouped, not altogether convincingly, in terms of political parties at home. The moving elements are the viceroys' ideas which seem to be regarded as policy but are never explicitly defined as such. A good deal is said about the application of these ideas, but very little about their formulation. Now if in fact policy is to be so defined, we

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need to know a lot more about how the various viceroys were chosen and the background from which they formed their ideas.

But is the world as seen from the viceregal throne really sufficient to explain imperial policy? Viceroys came out from England in succession, tried various projects, generally failed at some point in their designs, and went home. In India the civil servants remained. Men such as Sir John Strachey, Sir Alfred Lyall, and Allan Hume watched viceroys come and go. The problems which were new to each viceroy in turn were old to them just as they were old to the Indians. At times various of the civil servants manipulated viceroys and dominated their governments. We do meet these men from time to time in Dr. Gopal's pages, but we do not see the world through their eyes. They appear only to give advice or to express an opinion. At most they come forward out of nowhere to suggest something and then disappear. But some of them in fact played a much bigger role. In England these same men, established after retirement on the India Council or elsewhere, caught the ear of the secretary of state or engaged in politics. Nevertheless, Dr. Gopal does not examine the role of the Council, nor that of Parliament, nor that of the press. Systematic attention is not given even to political leaders, nor, with exceptions, to their effects on the viceroys' projects. Neither the prime ministers nor the secretaries of state are studied as such. Like the civil servants they take their entrances and exits on the cues in the viceregal correspondence.

Within the limits of his sources, Dr. Gopal's scholarly apparatus is generally impeccable and his judgments will commend themselves as widely as any one scholar's can. Two exceptions may be noted. The assertion that Dufferin deliberately encouraged Muslim separatism should not have been made without sufficient evidence. Again, the footnote references to the Ripon papers are largely meaningless to any reader and should have been brought up to date.

This is the first real attempt to study British policy throughout the period as a whole. The asking of hard questions is really a measure of the rapid advance in Indian historical writing and of the success rather than the failure of Dr. Gopal's book. Standards in Indian studies are racing ahead now at a rate which may be compared to the rising of Indian political aspirations under the empire. Dr. Gopal is one of the leaders of the present advance. If he cannot quite keep up with it, neither can anyone else. His work is bringing nearer the day when the Indian empire may find its Gibbon. The mere mention of such a name suggests how much is being expected of Dr. Gopal and by what standards he is being judged.

FREDERIC EUSTIS
Wheaton College

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American Aid and India's Economic Development *by S. Chandrasekhar. New York, Frederick A. Praeger and London, Pall Mall Press, 1965.—x, 243 pp. $6.50.*

This book provides an unusually comprehensive record of the United States aid program to India, including accounts of the varying forms and institutions through which our government chose to make assistance available. In addition, the book treats systematically the necessary associated subjects: the problems of India; the role which foreign aid plays; the conceptual approach of the donor to the task he has assumed. Foreign assistance is categorized into the major components of India's needs: agriculture, industry, health, education, and communication. The volume concludes with an appraisal of the impact of the aid program.

Professor Chandrasekhar is a recognized Indian scholar (director of the Indian Institute for Population Studies in Madras), a statesman (elected member of the Rajya Sabha), and a frequent visitor and lecturer in the United States and indeed in many other parts of the world. His book literally glows with enthusiasm for the concept and conduct of the program. In so far as he takes exceptions, they usually are pointed toward a more intimate marriage of the United States and the Indian genius and spirit. Thus he mentions the desirability of a larger role for the aid program (through counterpart funds) in family planning. He believes Indian tourism would benefit from an injection of modern Hiltons to replace the "new mausoleums" which are the best that Indian enterprise offers foreigners.

The book reads easily. Despite the great variety of specific subjects touched (allocation problems, tied aid, institutional reform, activities of private groups, to mention a very few) the author provides the essence of the problem in the briefest compass. Needless to say, the book can be a refreshing and gratifying experience to Americans.

One must only ask, "Is it really so?" What basis is there to the extensive criticisms now being leveled by Indian parliamentary leaders against the aid program, against too great involvement of foreign interests and ideologies in the Indian scene? The loudest protests seem to arise from the Left and Right, but is the Congress position today so stable that these views can be neglected? Perhaps the Indians can gain—politically as well as economically—from some changes in the levels and flows of foreign assistance. Whether or not this is true, the possibilities warrant mention, if not full discussion.

There are important related questions. Has foreign assistance played the "gap" role contemplated by officials and theorists in the early days of program development? Professor Chandrasekhar scarcely mentions the

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important differences between plan and reality, nor does he impute any significance to the emergence of significant patterns in this divergence. Thus, India's dependence on foreign aid has increased progressively over the plans. India's average rate of growth does not seem to be accelerating. The fortunes of industry (with its limited demands for labor) and of agriculture (where most of the labor force is committed) move divergently. Perhaps these and similar instances of reality versus plan constitute small deviations from the underlying rationale. But they certainly involve basic attributes of the theory of growth on which the United States-Indian aid has been postulated.

The record of this aid program constitutes a warm and noble chapter in history, but it also constitutes a record, and science demands that the record be analyzed—so that aid programs can be improved. In this spirit, changes in the aid program will need to be made over the next years. However informative Chandrasekhar's descriptions, they provide no helpful insight to this prospective need.

WILFRED MALENBAUM
University of Pennsylvania

The Correspondence of Edmund Burke, Volume V: July 1782-June 1789 *edited by Holden Furber with the assistance of P. J. Marshall. Chicago, University of Chicago Press and Cambridge, Cambridge University Press, 1965.—xxx, 496 pp. $12.00.*

The fifth volume of *The Correspondence of Edmund Burke* is the latest in a series which will be a monument to modern historical scholarship. Many new letters of Burke have been found; all have been dated; all are properly introduced; every allusion has been identified and footnoted; and many other sources have been cited to confirm or to question Burke's assertions and speculations. The result is a production marvelous in detail and imposing as a whole; the editorial work supplies so much detail of Burke's environment that it seems to reveal to every reader what could have been known only to an omniscient witness. This volume is edited by Holden Furber with the assistance of Peter J. Marshall, who give acknowledgment to many others of the Burke team, including the general editor Thomas W. Copeland and the associate editor John A. Woods. They all deserve the credit of effortless mastery in a well chosen work.

It is another question whether this volume is a monument to Burke and his concerns. In a private correspondence, behind the scenes, first names

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and small events necessarily fill our view. Burke has his eye on the play of public issues, but in reading his correspondence we have our eye on Burke backstage; the danger is that the private Burke now published be taken for the public Burke. Apart from the 1784 election and the Regency Crisis, the grand issue for Burke in this period was India; and what we learn of Burke on India in this book is, through no fault of the editor or of Burke, remarkably less than what can be learned from just one of his many writings and speeches on India. Nevertheless, the letters (although not the newly published letters) confirm that Burke's prosecution of Hastings was intended not only to secure "Justice for the People of India" (p. 389) but also to promote the constitutional practice of impeachment. Impeachment was held then as now in the odium of its seventeenth-century abuses, and during Hastings' trial such strict legal safeguards were enforced that impeachment was reduced almost to a redundant criminal prosecution. Burke tried to prevent this development. As the highest crimes are political and outside the law, they cannot be deterred and punished except by "a *publick political* tribunal" (p. 243) acting under the natural law which Burke so often invoked during the impeachment. In impeachments the problem is not so much to establish the facts as to prove their criminality (p. 241); and if natural law applied by gentlemanly politicians is hard to define, it is also hard to chicane. The editor takes the legal view when he finds it "hard to justify" Burke's use of rhetorical material designed to "work upon the popular sense" (pp. 386, 372), but the relevance of such evidence and the propriety of passionate advocacy were decided by Burke's conception of impeachment. That conception, perhaps, required a consensus on natural law in the Burkean formulation as its basis; and, lacking this consensus, we now deplore Burke's irregularities while admiring his humanity. For this reason, although Burke's "Indian" side "will remain least attractive to his admirers" (p. xviii), it will never be most unattractive to his detractors.

Burke was too busy (pp. 201, 437) to shine in his letters, but several flashes of his genius light this volume: the remarks on party morality (pp. 54-57), his judgment on a family squabble (pp. 182-87), his reply to an admiring female poet (pp. 200-01), a letter to Boswell on Dr. Johnson's poor opinion of Burke's wit (pp. 248-50), and a tribute to the unnoticed effects of a classical education (p. 337). But while this book is indispensable to every Burke library, it is useful mainly to the historian as he prepares his analysis of the public issues. Indeed, this excellent edition of Burke's correspondence is justified chiefly as preparation for a critical edition of Burke's writings and speeches.

HARVEY C. MANSFIELD JR.
Harvard University

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England, Europe and the Upper Nile, 1882-1899 *by G. N. Sanderson. Edinburgh, Edinburgh University Press, 1965.—xiv, 456 pp. $14.50.*

G. N. Sanderson, formerly professor of history at Khartoum, has written a full—indeed, definitive—study of how England became the master of the Upper Nile. What emerges is a case-history of European imperialism which must overwhelm doctrinaire exponents of simplistic interpretations with its staggering display of the complexity of policies and motives. The volume is a major contribution to European diplomatic history.

A catalogue of the conflicting motives must include Germany's use of its diplomatic weight, first, to secure French acceptance of the loss of Alsace-Lorraine, and, when this proved impossible, to promote war between England and France. Italy pursued dreams of *imperium,* forgetful of the new facts of power in the Mediterranean. Russian policy was based upon a "spiritual" interest in Ethiopian Coptic Christianity which Slavophile groups insisted had an affinity with Orthodoxy. The exponents of an economic interpretation will be cheered by efforts of Leopold of Belgium, stimulated by his characteristic rapacity, to form a Nilotic empire.

The principal contenders, France and England, on the other hand, were not impressed by the economic usefulness of the Upper Nile. Salisbury thought it "wretched stuff"; the Union Coloniale Française, an organization of French enterprises interested in colonial profits, was equally undeceived. Yet at the time of the Fashoda Crisis of 1898, there was every reason to believe that France and England would go to war over the Sudan. Sanderson, who writes well, tells us of the seriousness of this confrontation, of the eagerness with which influential men, on both sides of the Channel, sought a "final" showdown.

French interest in the Sudan was prompted by an "imperialism of prestige," which found its most forceful advocates among the anglophobic permanent officials at the colonial ministry. The British "official mind" was no doubt moved by a concern for Egypt, Suez, and the route to India, but a prestige imperialism, whose chief spokesmen were Rosebery and Chamberlain, and which was enthusiastically supported by an almost unanimous public opinion, played a significant role. Even the humanitarian organizations of "Exeter Hall" supported a vigorous Sudan policy as a blow to the slave trade; only John Morley and the *Manchester Guardian* were opposed. French public opinion was more seriously divided (though it is curious to note that Jaurès was among those to support the Marchand expedition), but the opponents of prestige imperialism won out, which led to Marchand's denunciation of "les coloniaux d'exploitation rationelle."

Sanderson's detailed picture of the Upper Nile confirms Robinson's and

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Gallagher's more general conclusions in *Africa and the Victorians*, though Sanderson is understandably, and justifiably, interested in emphasizing his differences with his predecessors. Certainly he is justified in suggesting that Robinson has gone too far in attacking economic imperialism as a "mythological beast." There is additional merit in emphasizing the importance of nationalism and chauvinism, with a democratic public opinion as its vehicle, in *fin-de-siècle* imperialism. At any rate, Sanderson has been entirely persuasive in stressing such matters in the particular case of the Upper Nile.

BERNARD SEMMEL
State University of New York, Stony Brook

Doctors and the State: The British Medical Profession and Government Action in Public Health, 1870-1912 *by Jeanne L. Brand. Baltimore, The Johns Hopkins Press, 1965.—xiii, 307 pp. $7.95.*

Beginning in the late nineteenth century, and continuing thereafter, the emphasis in health services has been on the welfare of the individual rather than on environmental conditions. It is the history of this important transition in medical thought and practice which Jeanne Brand has covered so well in her study of English public health administration from 1870 to 1912. This book, together with the recent biography of Sir John Simon by Lambert, now gives us a newer and fuller understanding and description of the development of state medicine or public health in England. This is important for an understanding of the history of American public health as well, because the British endeavor served as a model for many of the American advances.

Just as England was a leader in the industrial revolution, so, too, she led the way in many forms of public health legislation. The Local Government Act of 1871 and the Public Health Acts of 1872 and 1875 served to consolidate some of the medical functions of various, previously existing, boards and committees. Even so, there was still a separation of health functions throughout the government. Poor law medical reform, for instance, came very slowly. Partly through the work of the Poor Law Medical Officer's Association, and with the aid of the medical journals and other medical societies, the concept of state medicine expanded and became more acceptable. Miss Brand clearly traces this expansion, and does so by describing the attitudes and the conflicts within the government and within the medical profession. She describes also the rise of scientific medicine, especially in relation to infectious diseases. The growth of bacteriology, together with a statistical and analytical background, greatly facilitated the task of the social reformers in gaining public support.

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As the twentieth century opened, contract practice was already being widely discussed among the medical profession. One of the severest and most critical fights ever to occur between the profession and a government came to a boil with the National Insurance Bill of 1911. This bill was mainly the product of Lloyd George, then Chancellor of the Exchequer. The resulting arguments, threats of boycott, and final compromise and settlement are the most exciting parts of this book. It is striking how similar the demands and criticisms of the British Medical Association were in 1911 to those of the American Medical Association of the nineteen-sixties.

There is something in this book for a wide variety of readers, beyond the circle of medical historians. *Doctors and the State* is also, in part, an administrative history and an analysis of public and professional opinion. The notes are extensive, although unfortunately not at the foot of the page. The bibliography will be very useful, for it ranges through government documents and papers and a variety of other materials.

In her final sentence Miss Brand says, "The question of what paths toward national health this country will now take is profoundly significant for all Americans." Thanks to her thorough groundwork, all those who have an interest in this question will now have something which may serve as one of the guides to a satisfactory answer.

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The Fall of Paris: The Siege and the Commune of 1870-71 *by Alistair Horne. New York, St. Martin's Press, 1965.—xiv, 458 pp. $6.95.*

The Commune of Paris began on March 26 and ended on the twenty-eighth of May, 1871. Approximately twenty thousand Communards were killed by their compatriots. The Franco-Prussian War which preceded the Commune began on July 15, 1870, and went through two phases. The first lasted six weeks and ended on September 1, 1870, with the surrender of Louis-Napoleon to Bismarck. The second phase ended on January 27, 1871, when the French Government of National Defense which replaced the Empire, besieged in Paris for 130 days, also surrendered to Bismarck. During the war, about 150,000 Frenchmen and 28,000 Germans were killed or died of wounds. By my count, five different French structures of government ruled Paris during this period.

These are the bare facts of the period covered in Horne's lively account. The details, their significance, whether the actions of the participants were laudable or lamentable, and the reasons for the actions, have

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all been in dispute ever since. As Horne observes, "even today, it is virtually impossible to find any published accounts on the Commune that are not violently *parti pris:* either Marxist or bourgeois in sympathy" (xiii). Moreover, I am told that French graduate students are still warned away from the topic by their professors. One fact is certain. The Commune so established itself in communist ideology that, "in 1963 when the first three-man team of Soviet cosmonauts went up in the *Voskhod,* they took with them into space three sacred relics: a picture of Marx, a picture of Lenin,—and a ribbon off a Communard flag" (p. 433).

In his efforts to gain a more objective view of the Commune, Horne solicited diaries, letters, and reports by non-Frenchmen living in Paris. This material, written by diplomats, journalists, young merchants, and sundry others, gives a sense of immediacy if not involvement to the book. Foreigners cannot by that very fact, however, create an aura of objectivity. Social class ideologies as well as national sensibilities were involved in the events of the Commune. Middle- or upper-class persons are more likely to be abroad and certainly more likely to leave a written record. Colonel Stanley (British Grenadier Guardsman), who patronizingly wrote, "I have got into a strong unreasonable sympathy with the best of the Reds" (p. 295) also found the increased cost of washing silk shirts a major misfortune of the second siege.

The problem of conflicting sources is only exacerbated by Horne's method of acknowledging sources with an appendix of works consulted for each section. The problem is illustrated by the difference between Horne's account of the failure of the Commune to expropriate the Bank of France (pp. 301-02) and that given by Jellinek (*The Paris Commune of 1871* [New York, 1965, first published 1937], pp. 149-51), heretofore the most readily available source in English. They differ as to which person first approached the Bank, whether the Central Committee of the National Guard or the Commune made the overtures, who was then in charge of the Bank, how much money the Commune and/or the Committee did obtain from the Bank, how much aid the Bank gave to the government of Versailles, and the reasons why the Commune and/or the Committee did not seize the Bank. Yet in his "Reference Notes" Horne cites Jellinek as one of his sources for this account. The incident is not trivial because, as Horne reports, the failure to seize the Bank "was rated by both Marx and later Lenin as comprising one of the two cardinal errors committed by the Commune." Similar discrepancies remain unexplained, although at times Horne simply paraphrases other secondary sources.

Beyond the problem of merely getting the facts straight there is the problem of meaning and significance of both the Franco-Prussian War

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and the Commune. Some of the issues highlighted by Horne's story are why France went to war with Germany in the first place, and why her conduct of the war was so inept. The siege of Paris by the Prussians was militarily noteworthy for their big gun shelling of a civilian population. The French side distinguished itself with bombast, military inaction, and arming an ill-trained multitude—the National Guard. Horne implies that a great fear by the bourgeois government of the rabidly patriotic Left links these facts (p. 229). The severe peace terms imposed by the Germans and accepted by the newly elected French National Assembly had long-range consequences. How the Commune then grew out of the attempt of the National Assembly to seize the cannon of the National Guard, the extent to which various revolutionary parties and circles, including the Internationale, organized (or did not organize) the Commune, the disorganization leading to its demise and the terrible fratricide which followed are events which need explanation and which have had repercussions to this very day. By and large, except when he wonders what might have happened had a general acted more sensibly, Horne eschews speculation and analysis, and follows the modern style of mood-giving detail and first-person accounts.

Perhaps because of the paucity of his analysis, the concealment of his scholarly apparatus, and certainly because of his well selected and organized detail, Horne's *Fall of Paris* reads like an exciting novel and should stimulate interest in this puzzling episode. It is the best introduction to the Commune I have read. Yet there remains a place for a scholarly work addressed to some of the central issues and utilizing the as yet uncatalogued French archives.

CHARLES KADUSHIN
Columbia University

Atomic Energy Policy in France Under the Fourth Republic *by Lawrence Scheinman. Princeton, Princeton University Press, 1965.—xxiv, 259 pp. $6.50.*

Mr. Scheinman's book offers exactly what its title suggests: a sober, straightforward account of the development of atomic energy policy in France before de Gaulle, with a brief codicil demonstrating the essential continuity between the Fourth and Fifth Republics.

A number of salient points stand out. France's Atomic Energy Commission, established in 1945, was dominated until 1950 by its contingent of scientists headed by Joliot-Curie, but was then taken over by technocratically-minded administrators. Parliament and successive cabinets paid rela-

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tively little attention to atomic policy, which was "molded, guided and developed by a small group of persons operating through informal channels of communication outside the mainstream of political activity." This small group of administrators, politicians, and soldiers gradually moved toward the idea of developing atomic weapons, an idea that most French scientists and military men viewed with skepticism until the late nineteen-fifties. The shift in political and military opinion toward nuclear weapons was noticeable by the end of 1956, thanks to the pressure of external events; but the decision to build a bomb was not taken until April 1958, shortly before the Fourth Republic fell. Throughout the period, only one policy measure dealing with atomic energy was initiated by the government: the decision to join Euratom. Even that decision, however, was watered down by reserving France's freedom of action in the military atomic realm.

Mr. Scheinman believes that the Fourth Republic, had it survived, would have used its nuclear force for purposes that resemble de Gaulle's, but in much more restrained fashion. He anticipates that a post-Gaullist regime will "prune the scope of French ambitions," but will continue to use French nuclear capability for political advantage.

This is a careful, thorough, well organized book; it meets all the requirements of the sound doctoral dissertation. It is also colorless and frequently repetitive; it seems to proceed on the old pedagogical principle that if you tell people something three times, it will sink in. There are no human beings in the story, but only role-performing robots. If arguments were advanced and power conflicts played out behind the scenes, they rarely appear in this book. What we have here is the public record, drawn almost entirely from printed sources. Within those limitations, it is an effective piece of work.

GORDON WRIGHT
Stanford University

Pius XII and the Third Reich: A Documentation *by Saul Friedländer, translated from the French and German by Charles Fullman. New York, Alfred A. Knopf, 1966.—xxv, 238 pp. $4.95.*

This volume of documents dealing with the emotion-laden problem of Pope Pius XII's attitude to Nazi Germany was first published in France in 1964. It has since appeared in German, Dutch, Italian, and Spanish editions, and it has now been made available to the English reading public as well. The author is associate professor of contemporary history at the Graduate Institute of International Studies in Geneva. Friedländer decided

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to compile this book after the chance discovery of a misfiled document in the archives of the former Nazi Ministry of Foreign Affairs in Bonn. He was then doing research for his dissertation, "Hitler and the United States: 1939-1941," to be republished shortly.

The great majority of the documents in this collection originate from the files of the German Foreign Ministry. A few are taken from British, American, and Israeli archives. Most of the documents have been known to specialists in the field but many of them are now published for the first time. The author clearly has aimed at reaching the general reader. While the source of each document is indicated, the author does not make clear whether he is reproducing the complete text or only a part. The documents are printed without their technical apparatus; they lack identifying numbers and full names of addressee and author. Professor Friedländer provides a running commentary which enhances the readability of the book especially for the layman.

Why did the Pope refrain from publicly denouncing Nazi tyranny and especially the murder of the Jews? The documents, Friedländer concludes, yield four answers: the Pope felt that he could not condemn specific atrocities without violating the posture of neutrality forced upon him by the fact that World War II pitted Catholics against Catholics; the Pontiff could not condemn the German atrocities without denouncing those committed by the Russians; he had to remain silent for fear of making things worse; lastly, experience had shown the futility of all approaches to the Germans. The author adds two other theses which he considers basic though less securely documented. First, Pius XII, who had spent many years in Germany as papal nuncio, had a predilection for that nation which was not substantially diminished by the nature of the Nazi regime. Second, the Pope feared a Bolshevization of Europe more than anything else and he therefore was careful not to weaken Germany by criticizing its wartime policies.

At the end of his book Friedländer expresses the hope that the documents of the Vatican archives will soon be published "so that the events and personages can be brought into proper perspective." Since these words were written the Secretariat of State of the Holy See has published two volumes of documents in a new series entitled "Actes et Documents du Saint-Siège Relatifs à la Seconde Guerre Mondiale." Several additional volumes are expected in the near future. The decision of the Holy See to abandon its policy of restricting access to the Vatican archives beyond the year 1846 is probably in part due to the publication of books critical of Pope Pius XII's policies like that of Professor Friedländer. The documents contained in the new Vatican publications, this reviewer has found, do not open up any basically new perspectives, but they provide us with impor-

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tant new historical details. Professor Friedländer's study has helped to make this new source of knowledge available and for this we are indebted to him.

GUENTER LEWY
University of Massachusetts

Soviet Military Policy: A Historical Analysis *by Raymond L. Garthoff. New York and Washington, Frederick A. Praeger, 1966.—viii, 276 pp. $6.50.*

The great subject of Mr. Garthoff's analysis is war, peace, and revolution in Communist ideology and Russian (and more incidentally, Chinese) praxis and the specific role assigned to military power in these three situations. The historical grounding is laid in the Russian, rather than the Communist, past, in Tsarist diplomacy and armaments from the eighteen-sixties on, rather than, let us say, Friedrich Engels' military notions, in chapters dealing with "Military Influences and Instruments in Russian Policy, 1860-1965," "The Military as a Sociopolitical Force in Russia," and "The Marshals and the CP, 1945-1965." Under the broad spectrum of the term "military policy" much or most of relevant ideology cum practices is taken care of; but there remain omissions—of discussions that could have dealt with the policies and politics of the military men, hence the slighting of figures like Skobolev or Tukachevsky, and of the forces and tendencies they stood for. This results in a certain depersonalization, perhaps inevitable considering the state of certain sources on which "Kremlinology" must draw and which finds Russian civil-military relations one of the hardest secrets to penetrate. Instead of a consideration of the formulators we are given chapters dealing with "The Military Considerations in the Formulation of Soviet Foreign Policy," "Ideology and the Balance of Power," "The Geostrategic Arena, Economics and Technology," and "Deterrence, Counterdeterrence and Disarmament." That would leave unmentioned and unanswered such intriguing questions as who, civilians or military, were the true makers of the Finland war of 1939, ascribed by the author to "political miscalculation" on the Soviets' part, when others might still wonder whether the annexations of Finnish soil, resulting in increased military security of the Russian second capital, were not in fact original war aims.

As to the treated special subjects, the coverage could not have been better and more thorough, in broadness of concept and detailed evidence, the latter including stupendous knowledge of a literature that ranges as far as policy statements of the rulers of the smallest Communist state, Albania.

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That would apply equally well to the treatments given the Soviets' military ties with Eastern Europe, Sino-Russian military relations, or the ideology concerned with "War and the Communist Revolution." Still further discussions, by no means extraneous, might have been dedicated to problems dear to the Communists, such as "the just war" or "internal crises" in the capitalist world as "causes of war"; or, in the chapter on the balance of power, the Russians'—more than fleeting?—notion of a division of the world between the two super-powers; or whether Soviet military thought had determined or codetermined the extent of the westward annexations and controls since 1944-45. Furthermore: Did the military demand and thus obtain what was to them an indispensable *Aufmarschraum*, the space for initial staging? If so, these acquisitions would be doubly non-negotiable. Have the age-old aspirations for the *dominium maris Baltici* been revived? Is any thought given, by civilians or military, as is the case in the West, to the idea of ending present and future wars by something less radical than unconditional surrender? No one would be better qualified to be presented with and to answer these queries, provoked by his chosen title, than Mr. Garthoff himself. This we know from his earlier writing and of this we feel reassured by the present work.

ALFRED VAGTS
Sherman, Connecticut

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Book Notes

In *The Development of Latin American Private Enterprise* (Washington, D. C., National Planning Association, 1964; xii, 136 pp., $2.50) by Frank Brandenburg we have a rationale for the development of private enterprise and a demonstration at the same time of the extensive development of state-owned enterprise in Latin America. This is a partisan piece; its purpose "is to assess the means by which private enterprise in Latin America can increase its contribution to the area's economic, political and social progress." "The trend toward socialization may threaten future wealth, creativity, and freedom unless it is checked in some countries and reversed in others," the author writes. Once Brandenburg has introduced his values, he switches to description. On the basis of interviews with more than five hundred businessmen in seven countries, he surveys the "typical" entrepreneurs in Latin America: the origins of their wealth, their ethnic and religious backgrounds, the profitability of their enterprises, and their attitudes toward business problems. Brandenburg also tries to answer the question, "Who really owns Latin American enterprise?" He has compiled, and publishes here, lists of the thirty largest businesses existing in the Latin American countries with the highest national income (Brazil, Mexico, Argentina, Venezuela, Colombia, and Chile). His lists provide a panorama of the sectors in which governments are participating, the role of private Latin American capital, and the extensive contribution of private foreign capital. An appendix to the book includes a convenient tabulation of the national planning institutions and national plans in Latin America. Each chapter concludes with recommendations on how Latin American industrialists, Latin American governments, foreign capital, foreign governments, and international agencies can strengthen private enterprise in Latin America. In short, this is both a tract for private enterprise and a description of the relation between the private and public sectors in Latin America in the years 1962-64.—Mira Wilkins, *Columbia University*.

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Rarely can an American historian claim an American first, original contribution to Austrian history. Yet this is precisely what Professor William A. Jenks is entitled to do with reference to his *Austria under the Iron Ring, 1879-1893* (Charlottesville, The University Press of Virginia, 1965; xi, 332 pp., $6.00). It is rare also that Western historians dealing with Austrian history fail to be apologetic about the merits of their topics and heroes, where there is really nothing to be apologetic about. In this respect Professor Jenks falls in line, though the shallow post-World War I thesis that imperial Austria was a peoples' dungeon no longer requires any refutation. Overcompensation for former grievous errors is, today, a more dangerous trap. Thus Jenks' comparison of Taaffe, Francis Joseph's skillful but essentially unimaginative Prime Minister, who administered the domestic affairs of the western part of the Habsburg empire, with Bismarck, who created a new empire, is strange indeed. Jenks is, of course, perfectly correct in stating that Taaffe must be judged by the standards of his times, and in this respect his achievements in regard to financial policies and social reforms were quite respectable. Claims that these latter policies were largely responsible for the revisionist tendencies in Austrian Social Democracy a generation later—less revisionist, incidentally, than those in German, French, or English contemporary socialist parties—go too far. Neither was Taaffe's nationality policy of keeping the Austrian national groups in a state of well tempered dissatisfaction superior to that of several other Austrian prime ministers under later, more difficult conditions. Jenks' study of the Taaffe regime does not deal with cultural affairs, and matters of foreign policy are merely touched upon in passing. Nevertheless the book deals with an almost bewildering number of parliamentarians, cabinet ministers, and high civil servants. Presumably the author had no space left to characterize the most important ones. He presupposes too much background knowledge and if he had restricted himself to a less extensive cast he could have given us even more. However, this thorough study of Austrian administration based on extensive perusal of untapped original sources offers much as it stands, and we have every reason to thank Professor Jenks for a most creditable contribution to Austrian history.—ROBERT A. KANN, *Rutgers, The State University.*

In *The Old Republicans—Southern Conservatism in the Age of Jefferson* (New York, Columbia University Press, 1965; 340 pp., $7.95) Norman K. Risjord affirms the existence of a discernibly coherent group of Southern politicians who took "deeply to heart" that peculiar body of Jeffersonian political doctrine known as "the Old Republican creed."

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Concerned with the preservation of their precious plantation society in a world of profound economic and social change, the Old Republicans sought to protect their power and their way of life by advocating, at the level of national politics, states' rights, curbs on executive power, debt reduction, tax repeal, and preferred treatment for agriculture. "Conservative" in the sense of being reluctant to adapt philosophically and politically to the "felt needs of the time" (Mr. Risjord's definition) these men were also "Liberals" in the classic sense of the word, that is, they believed in freedom from government, freedom for the individual. Opposed to the centralist, "neomercantilist" measures of their Federalist predecessors, many nearly followed their most illustrious member, John Randolph of Roanoke, into open opposition against the Jefferson administration after its failure to repudiate the entire Federalist inheritance. Wedded to peace long after "nationalists" in the party had become militant against Great Britain, few save Randolph finally opposed hostilities in 1812 although they voiced concern over the centralizing tendencies of the war program. In the postwar reaction against the Bank of the United States, the protective tariff, and internal improvements, the Old Republicans won new allies and advocates, only to see their doctrines appropriated by Southern "sectionalists" like Calhoun, their cohesion shattered in the factional turmoil of the eighteen-twenties. If the voting on the great issues of the day actually seems too inconsistent to show so many Old Republicans as Mr. Risjord tries to identify, clearly Randolph, John Taylor of Caroline, Richard Stanford, and perhaps half a dozen more did constitute a "school" much as he describes. The sobriquet "Old Republican" did mean something to contemporaries, and despite the imprecision of some of his other categories and definitions, Mr. Risjord has performed a useful service in reminding us again of its original content and appeal.—ROGER H. BROWN, *The American University*.

International Relations and World Politics Since 1919 (New York, Asia Publishing House, 1965; x, 600 pp., $10.50) by S. N. Dhar is of considerable interest as the statement of a responsible Indian scholar's understanding of the movement and meaning of world events since the end of the First World War. As such, it is remarkably representative of the thinking of those Indian intellectuals—perhaps the majority—whose ideological commitments are a reflection of British liberalism as formulated in the ninteen-thirties. But as the author turns his attention away from the Europe of the Treaty of Versailles and the Spanish Civil War to Asia in the post-1947 world, there is a change of mood. Something of the

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euphoria of the days when Indian intellectuals and politicians were committed to belief in the Afro-Asian peace-loving nations remains in the pages of the text, as on the discussion of the Bandung Conference and the doctrine of Panchsheel, but this is overlaid by backward glances occasioned by the border strife with China after 1962. The American policies which previously had been contrasted with the peaceful intentions of India are now seen as consonant with those of India. On the whole, Dhar displays a reasonable objectivity in his discussion of the Sino-Indian conflict, but this tends to disappear when the focus shifts to Pakistan, and the analysis of the Kashmir crisis is a careful restatement of the official Indian position. Here as elsewhere the book provides a valuable guide to Indian thought on international politics.—AINSLIE T. EMBREE, *Columbia University.*

The *Yearbook of the United Nations, 1964* (New York, Columbia University Press in cooperation with the United Nations, 1966; xi, 710 pp., $16.50) reflects the uniqueness of the United Nations' activity during the period covered. This, of course, was the year of the U.S.-U.S.S.R. confrontation which condemned the General Assembly to inactivity. This is reflected in the size of the volume (710 pages as against 823 for 1963) and more particularly in the amount of space devoted to those activities which are the particular concern of the Assembly—political questions, economic and social questions, colonial questions, and administrative and budgetary questions. The authors of the *Yearbook* decided wisely to devote an initial section—over fifty pages—to an account of the origins, history, and course of the UN financial crisis. This is an extremely valuable part of the volume for the student. In other sections of the volume where one would expect normally to find an account of General Assembly discussions, one is reminded that due to "the special circumstances prevailing during the first part of its nineteenth session, which recessed on 18 February 1965, the Assembly was unable to consider" the matter.

As is the case with previous volumes, those who have worked to make the 1964 volume possible deserve the highest commendation. It continues to be an indispensable book of reference for all those seriously interested in the work of the organization.—LELAND M. GOODRICH, *Columbia University.*

Der Historiker und die Weltgeschichte, by Fritz Wagner (Freiburg and Munich, Karl Alber, 1965; 187 pp., 17.80 DM), is a remarkable volume by a Marburg historian on the course and problems of historiography. It

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consists of three quite different parts. In the first one the author gives an admirably concise survey of the development of historical writing from Herodotus and Thucydides through the Middle Ages, the Renaissance, and modern times. In the next, less sweeping, more penetrating part he reassesses Ranke's work in the light of the contemporary historical experience. The topic is delicate, but the author approaches it with sovereign mastery. Ranke's obvious limitations, for instance his overemphasis on the state and politics at the expense of society and his essentially aristocratic perspective in an age of the rising masses, are counterbalanced by his astonishingly "modern" sensitivity to the problem of continuity and discontinuity. His concern with the uniqueness of the historical event, with the "immediacy" of each epoch to God has confronted him after all with an understanding of time as a "puzzle of discontinuity" (Wagner). Ranke has been vulgarized and betrayed by his own students in Germany. Not until Meinecke have the transcendental dimensions of his thought been followed up. Ranke's God was no mere Protestant conventionality; He was in the center of the great historian's view of man and history. Thus there emerges a connection between Ranke and Kierkegaard, and contemporary historians such as Herbert Butterfield and Pieter Geyl are true descendants of the German historian.

The third part of the book, which deals with "new avenues" to world history, is the most creative one. In it the author discusses the limits of historicism, the limits of what Toynbee called the "egocentric illusion" of Europe. Tactfully, thoughtfully, he redefines the function of the historian in an age of doubt and despair. "The historian is, like the physician, familiar with death and as a diagnostician of mortality he is on the lookout for life."

Professor Wagner has absorbed an enormous body of literature on history and historiography and has produced a penetrating and thought-provoking volume.—KLEMENS VON KLEMPERER, *Smith College.*

The literature on "Democracy" is so large that another publication on *The Problem of Democracy*, by Herbert Tingsten (Totowa, N. J., The Bedminster Press, 1965; 211 pp., $5.00) might meet with skepticism at first glance. But Tingsten's book is of particular value, since he integrates a series of problems into a whole. He juxtaposes in an interesting way the democratic ideal as a doctrine referring to the *form of government* with the various socio-political ideologies of the nineteenth and twentieth centuries concerned about the *substance and content* of public policy. Democracy for Tingsten means political liberty for all citizens by equal voting rights and majority rule. This doctrine of democracy is based on the

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belief that reason, man's most valuable quality, will prevail in public affairs through the process of debate. The original champions of democracy believed that liberty and equality in social relations could be established by a form of government based on equal representation. But political history since the advent of the democratic ideology shows that even progressive political leaders did not always share the belief in the beneficial effects of a democratic form of government. The representatives of liberalism thought that freedom was endangered through the welfare policy favored by the majority, and the ideologues of equality considered equality unattainable by a democratic regime in a class society. Thus not only conservatives but liberals and socialists were at times critical of democracy and opposed a more comprehensive democratic regime. Tingsten's study gives a critical evaluation of the democratic doctrine itself, by analyzing the difficulties and contradictions of a representative form of government in modern society. How is it possible to transpose the "will of the people" into reality in a mass society ruled by the power of parties and interest groups? To what extent does propaganda distort rather than elucidate public opinion? Is there any possibility of overcoming the political lethargy of a large segment of the population whose opinion should count in a true democracy? Is a political debate really guided by rational argument and does it result in the predominance and victory of reason? Clarity of thought and language makes Tingsten's book particularly suitable for teaching purposes.—KAETHE MENGELBERG, *New York City.*

The complexities of power relationships and political change in Africa frequently bewilder social scientists without knowledge of the continent. But the most bewildering country to students of Africa has been Zanzibar. Michael F. Lofchie's *Zanzibar: Background to Revolution* (Princeton, Princeton University Press, 1965; x, 316 pp., $7.50) helps to make sense out of the peculiar politics of Zanzibar by incorporating historical, geographical, economic, and social data into political analysis.

Lofchie shows how Zanzibar society was formed in successive waves of immigration. The establishment of Oman's dynasty in Zanzibar in the nineteenth century had a different impact on Zanzibar Island than it did on adjoining Pemba Island. Similarly, geographical variations on Zanzibar Island led to the establishment of an Arab landholding class on the western portion of the island while the African population was crowded into the poorer eastern portion. Out of these early distinctions, plus the later influx of mainland Africans, developed the basic social structure upon which modern politics in Zanzibar evolved. Although the British ran Zan-

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zibar largely as a colony (legally it was a protectorate), they were committed to supporting Arab strength, at least with respect to non-British elements. However, the Arabs were undermined by British political control and impoverished by the wealthy Asian population and by their own proclivity for plural marriage and equal distribution of property among all sons. Zanzibari nationalism arose from a small group of Arab intellectuals who, according to Lofchie, looked upon their movement as a way to retain Arab hegemony in the independence period. Suffering defeat in the first elections held in Zanzibar in 1957, superior political strategy and organization permitted them to win power in the 1961 and 1963 elections and to take the country into independence even though the African-based Afro-Shirzzi party won slight popular majorities. Moving to control oppositionist tendencies, the Arab-led government limited political possibilities so that a violent overthrow of the government became the only means to obtain political change.

Lofchie's brief treatment of the revolution is excellent. One point suggested by Lofchie should be emphasized—the vulnerability of the Zanzibar government to revolutionary change. Lofchie notes that the revolution was effected by a miniscule army, privately collected by a single individual, a fact which highlights the tenuousness of African government. This fact also points up one weakness of Lofchie's study. In detailing the "background to revolution," Lofchie operates in a rational frame of reference (as indeed social scientists must) showing how social, economic, geographic, and other factors produced certain political outcomes. Yet, the successful revolution staged by John Okello was essentially a non-rational operation. Okello appeared from nowhere with a miniscule following. His assault on two poorly defended police arsenals plus the general background of dissatisfaction of the African population produced incredible consequences for Zanzibar political life. Yet this was literally an historical accident. It was this non-rational event—unpredictable, unforseen—that produced political change of bewildering significance.—WILLIAM H. FRIEDLAND, *New York State School of Industrial and Labor Relations.*

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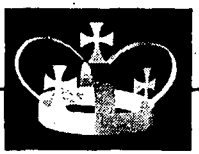
COLUMBIA  COLUMBIA

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